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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, November 10, 2009
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Presidential Documents

Title 3—

The President

Proclamation 8442 of October 23, 2009

National Forest Products Week, 2009

By the President of the United States of America

A Proclamation

America's forests have helped spur the growth and development that has been indispensable to our Nation's success. They have provided timber and water, as well as habitat for wildlife and opportunities for recreational activities. As a repository for renewable natural resources, forests have supplied the raw materials that have sustained us throughout our history. During National Forest Products Week, we recognize the value of our woodlands and commit ourselves to good stewardship and conservation practices that help us to responsibly manage our Nation's forests.

As a renewable and recyclable resource, wood is one of our Nation's most environmentally friendly building materials. Wood fiber is used throughout our daily lives, from the paper we write on to the offices where we work. We value the beauty of wood in our furniture, in our homes, and in artwork that surrounds us. Today, modern technology and stewardship practices by Federal, State, tribal, and private landowners have improved the way we manage our natural resources so that forests can meet the needs of current and future generations.

Forests are one of the foundations on which our Nation was formed; they are the backbone of our environment. This week, we recognize the value of forest products and the importance of their sustainable use to our lives.

To recognize the importance of products from our forests, the Congress, by Public Law 86–753 (36 U.S.C. 123), as amended, has designated the week beginning on the third Sunday in October of each year as National Forest Products Week and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim the week beginning on the third Sunday in October of each year as National Forest Products Week. I call on all Americans to celebrate the varied uses and products of our forested lands, as well as the people who carry on the tradition of careful stewardship of these precious natural resources for generations to come.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of October, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. E9–26092
Filed 10–27–09; 8:45 am]
Billing code 3195–W9–P

Presidential Documents

Proclamation 8443 of October 23, 2009

Declaration of a National Emergency With Respect to the 2009 H1N1 Influenza Pandemic

By the President of the United States of America

A Proclamation

On April 26, 2009, the Secretary of Health and Human Services (the ''Secretary'') first declared a public health emergency under section 319 of the Public Health Service Act, 42 U.S.C. 247d, in response to the 2009 H1N1 influenza virus. The Secretary has renewed that declaration twice, on July 24, 2009, and October 1, 2009. In addition, by rapidly identifying the virus, implementing public health measures, providing guidance for health professionals and the general public, and developing an effective vaccine, we have taken proactive steps to reduce the impact of the pandemic and protect the health of our citizens. As a Nation, we have prepared at all levels of government, and as individuals and communities, taking unprecedented steps to counter the emerging pandemic. Nevertheless, the 2009 H1N1 pandemic continues to evolve. The rates of illness continue to rise rapidly within many communities across the Nation, and the potential exists for the pandemic to overburden health care resources in some localities. Thus, in recognition of the continuing progression of the pandemic, and in further preparation as a Nation, we are taking additional steps to facilitate our response.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, including sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 *et seq.*) and consistent with section 1135 of the Social Security Act (SSA), as amended (42 U.S.C. 1320b–5), do hereby find and proclaim that, given that the rapid increase in illness across the Nation may overburden health care resources and that the temporary waiver of certain standard Federal requirements may be warranted in order to enable U.S. health care facilities to implement emergency operations plans, the 2009 H1N1 influenza pandemic in the United States constitutes a national emergency. Accordingly, I hereby declare that the Secretary may exercise the authority under section 1135 of the SSA to temporarily waive or modify certain requirements of the Medicare, Medicaid, and State Children's Health Insurance programs and of the Health Insurance Portability and Accountability Act Privacy Rule throughout the duration of the public health emergency declared in response to the 2009 H1N1 influenza pandemic. In exercising this authority, the Secretary shall provide certification and advance written notice to the Congress as required by section 1135(d) of the SSA (42 U.S.C. 1320b–5(d)).

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of October, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. E9–26130
Filed 10–27–09; 8:45 am]
Billing code 3195–W9–P

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

RIN 0580–AA94

United States Standards for Rough Rice, Brown Rice for Processing, and Milled Rice

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending the U.S. Standards for Rough Rice, Brown Rice for Processing, and Milled Rice, to change the requirement that certain information currently provided on the grade line of official certificates for Mixed rice be moved to the Results section of the inspection certificate. GIPSA believes that these changes will enhance the use of the inspection certificate, and as a result, help to facilitate the marketing of Mixed rice.

DATES: *Effective Date:* November 27, 2009.

FOR FURTHER INFORMATION CONTACT: Beverly A. Whalen, USDA–GIPSA–FGIS–ODA, Beacon Facility—STOP 1404, PO Box 419205, Kansas City, Missouri, 64141–6205; Telephone: (816) 823–4648; Fax Number: (816) 823–4644; e-mail: *Beverly.A.Whalen@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Agricultural Marketing Act of 1946 (AMA) (7 U.S.C. 1621–1627) directs and authorizes the Secretary of Agriculture to develop and improve standards for agricultural products (7 U.S.C. 1622). These are standards of quality, condition, quantity, grade, and packaging. The standards encourage uniformity and consistency in commercial practices.

GIPSA establishes and maintains a variety of quality and grade standards for agricultural commodities that serve as a fundamental starting point to define commodity quality in the domestic and global marketplace. The AMA standards are voluntary and widely used in private contracts, government procurement, marketing communication, and, for some commodities, consumer information. Standards developed by GIPSA under the AMA include rice, whole dry peas, split peas, feed peas, lentils, and beans.

GIPSA inspects shipments of rice in accordance with the AMA standards to establish the grade of the rice and issues inspection certificates for each shipment. We provide official procedures for inspections in the Rice Inspection Handbook for determining the various grading factors. In addition to Federal usage, the rice standards are applied by one State and one private cooperator. In 2008, GIPSA performed approximately 37 percent of official rice inspections, with State and private cooperators performing the balance of official inspections. When official rice inspectors issue inspection results, they document the grade designation on the grade line of the inspection certificate. The requirements for the grade designation for Rough Rice, Brown Rice for Processing, and Milled Rice categories are included in the regulations issued under the AMA (7 CFR part 868).

The current regulations in 7 CFR 868 Subparts C (§§ 868.201–213), D (§§ 868.251–264), and E (§§ 868.301–316) specify U.S. Standards for Rough Rice, Brown Rice for Processing, and Milled Rice, respectively, and include provisions about the contents of the grade designation for each category of rice. In the grade designation for each category of rice, there is an additional set of information provided for the class of Mixed rice that specifies the content. Under the current standards, this additional information for Mixed rice is included on the grade line of the inspection certificate.

This final rule moves the additional information on Mixed rice to the Results section of the certificate to enhance the use of the certificate.

Notice of Proposed Rulemaking and Final Action

GIPSA published a Notice of Proposed Rulemaking in the **Federal Register** on June 24, 2009 (74 FR 30015), inviting interested parties to comment on amending the regulations under the AMA. GIPSA received no comments on the proposed rule during the comment period that ended on August 24, 2009. Accordingly, GIPSA is publishing the final rule as it was proposed. The revisions to §§ 7 CFR 868.211, .262 and .314 are as follows:

(1) Revise the section heading wording from ''Grade Designation'' to read ''Grade Designation and Other Certificate Information;''

(2) Specify the grade designation requirements for all classes of rice in paragraph (a) of each section;

(3) Specify additional information required only for the class of Mixed rice in paragraph (b) of each section;

(4) Specify that the additional information for Mixed rice be reported in the Results section of the inspection certificate; and

(5) Convert the note at the end of the section to a new paragraph (c) in each section.

We are also making other minor changes that include clarifying that grade designation information goes on the grade line of the inspection certificate. In addition, we are making the format more readable and more consistent with other regulations in this section by converting notes into numbered paragraphs, and by inserting line breaks after each item in numbered lists of items.

Effects on Regulated Entities

This final rule moves certain information from the grade line to the Results section of the inspection certificate. GIPSA believes that this final rule will simplify the standards for rice and improve official inspection services by allowing for more efficient use of electronic certification. Regulated entities should not be additionally burdened by this proposed amendment. Moreover, having more legible inspection certificates should help these entities facilitate the marketing of rice.

Executive Order 12866 and Regulatory Flexibility Act

The Office of Management and Budget has designated this rule as not

significant for the purposes of Executive Order 12866.

We have determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). An initial regulatory flexibility analysis as described in 5 U.S.C. 605 of the Regulatory Flexibility Act is not required or provided here.

The rice industry includes producers [approximately 4,300 farms (USDA–2002 Census of Agriculture)], handlers, processors, and merchandisers, who are the primary users of the rice standards, and use the standards as a common trading language to market rice. In addition, there is one state cooperator and one private cooperator that apply the standards. For North American Industry Classification System (NAICS) code 311212 ''rice milling,'' the Small Business Administration size standard is $500,000 in annual revenues. Most users of the official inspection services and those entities that perform these services do not meet the requirement of small entities. Even though some users may be small entities, this final rule will not adversely affect or burden these users. Under the provisions of the AMA (7 U.S.C. 1621–1627), it is not mandatory for rice to be inspected. Although we do not expect this final rule to add any additional cost for entities of any size, any such costs would apply equally to all entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform, and is not intended to have a retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the information collection and recordkeeping requirements in Part 868 have been previously approved by OMB No. 0580–0013.

E-Government Compliance

GIPSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 868

Administrative practice and procedure, Agricultural commodities, Reporting and recordkeeping requirements, Rice.

■ For the reasons set out in the preamble, we amend 7 CFR part 868 as follows:

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

■ 1. The authority citation for part 868 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 2. Revise § 868.211 to read as follows:

§ 868.211 Grade designation and other certificate information.

(a) *Rough rice.* The grade designation for all classes of Rough rice shall be included on the certificate grade-line in the following order:

(1) The letters ''U.S.;''

(2) The number of the grade or the words ''Sample grade,'' as warranted;

(3) The words ''or better,'' when applicable and requested by the applicant prior to inspection;

(Approved by the Office of Management and Budget under control number 0580–0013)

(4) The class;

(5) Each applicable special grade (see § 868.213); and

(6) A statement of the milling yield.

(b) *Mixed Rough rice information.* For the class Mixed Rough rice, the following information shall be included in the Results section of the certificate in the following order:

(1) The percentage of whole kernels of each type in the order of predominance;

(2) The percentage of large broken kernels of each type in the order of predominance;

(3) The percentage of material removed by the No. 6 sieve or the No. 6 sizing plate; and

(4) The percentage of seeds, when applicable.

(c) *Large broken kernels.* Large broken kernels, other than long grain, in Mixed Rough rice shall be certified as ''medium or short grain.''

■ 3. Revise § 868.262 to read as follows:

§ 868.262 Grade designation and other certificate information.

(a) *Brown rice for Processing.* The grade designation for all classes of Brown rice for processing shall be included on the certificate grade-line in the following order:

(1) The letters ''U.S.;''

(2) The number of the grade or the words ''Sample grade,'' as warranted;

(3) The words ''or better,'' when applicable and requested by the applicant prior to inspection;

(Approved by the Office of Management and Budget under control number 0580–0013)

(4) The class; and

(5) Each applicable special grade (see § 868.264).

(b) *Mixed Brown rice for Processing information.* For the class Mixed Brown rice for processing, the following information shall be included in the Results section of the certificate in the following order:

(1) The percentage of whole kernels of each type in the order of predominance;

(2) The percentage of broken kernels of each type in the order of predominance, when applicable; and

(3) The percentage of seeds, related material, and unrelated material.

(c) *Broken kernels.* Broken kernels, other than long grain in Mixed Brown rice for processing shall be certified as ''medium or short grain.''

■ 4. Revise § 868.314 to read as follows:

§ 868.314 Grade designation and other certificate information.

(a) *Milled rice.* The grade designation for all classes of Milled rice shall be included on the certificate grade-line in the following order:

(1) The letters ''U.S.;''

(2) The number of the grade or the words ''Sample grade,'' as warranted;

(3) The words ''or better,'' when applicable and requested by the applicant prior to inspection;

(Approved by the Office of Management and Budget under control number 0580–0013)

(4) The class; and

(5) Each applicable special grade (see § 868.316).

(b) *Mixed Milled rice information.* For the class Mixed Milled rice, the following information shall be included in the Results section of the certificate in the following order:

(1) The percentage of whole kernels of each type in the order of predominance;

(2) The percentage of broken kernels of each type in the order of predominance, when applicable; and

(3) The percentage of seeds and foreign material.

(c) *Broken kernels.* Broken kernels, other than long grain in Mixed Milled rice shall be certified as ''medium or short grain.''

J. Dudley Butler,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E9–25928 Filed 10–27–09; 8:45 am]

BILLING CODE 3410–KD–P

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2009–24]

Amendment of Agency Procedures for Probable Cause Hearings

AGENCY: Federal Election Commission.

ACTION: Agency procedure; amendment.

SUMMARY: On November 19, 2007, the Federal Election Commission (''Commission'') published a procedural rule making permanent a program allowing respondents in enforcement proceedings under the Federal Election Campaign Act, to have a hearing before the Commission. The Commission is now amending its procedures to provide that the Commissioners may ask questions of the General Counsel and the Staff Director, and their staff, during probable cause hearings. This amendment will conform the procedures for enforcement hearing with the Commission's procedures for audit hearing published earlier this year.

DATES: The amended hearing procedures will be effective on October 28, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Mark D. Shonkwiler, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Commission is amending its procedures to provide that Commissioners may ask questions of the General Counsel and the Staff Director, and their staff, during probable cause hearings.

I. Background

On October 25, 2007, the Commission adopted an agency procedure that made permanent a program that allows respondents in enforcement proceedings under the Federal Election Campaign Act (''FECA''), to have a hearing before the Commission prior to the Commission's consideration of the General Counsel's recommendation on whether to find probable cause to believe that a violation has occurred. *See* Procedural Rules for Probable Cause Hearings, 72 FR 64919 (Nov. 19, 2007) (''PC Hearing Procedures''). In PC Hearing Procedures, the Commission indicated that during probable cause hearings, ''[r]espondents (or their counsel) will have the opportunity to present their arguments, and Commissioners, the General Counsel, and the Staff Director will have the opportunity to pose questions to the respondent, or respondent's counsel, if represented.'' PC Hearing Procedures, 72 FR at 64920. The PC Hearing Procedures did not specifically address whether Commissioners could pose questions to the General Counsel and the Staff Director during probable cause hearings.

On June 25, 2009, based in part upon its experience with the probable cause hearing program, the Commission adopted a new agency procedure providing committees that are audited by the Commission, pursuant to the FECA, with the opportunity to have a hearing before the Commission prior to the Commission's adoption of a Final Audit Report. *See* Procedural Rules for Audit Hearings, 74 FR 33140 (July 10, 2009) (''Audit Hearing Procedures''). In Audit Hearing Procedures, the Commission indicated that during audit hearings, ''Commissioners will have the opportunity to pose questions to the audited committee, and Commissioners may ask questions designed to elicit clarification from the Office of General Counsel or Office of the Staff Director.'' Audit Hearing Procedures, 74 FR at 33142.

II. Amendment of Agency Procedures for Probable Cause Hearings

Consistent with the recently adopted agency procedures for audit hearings, the Commission is amending its procedures for probable cause hearings to specifically provide that Commissioners may ask questions during probable cause hearings designed to elicit clarification from the Office of General Counsel or Office of the Staff Director. The Commission is not making any other changes to its procedures for probable cause hearings.

Conclusion

This document amends an agency practice or procedure. This document does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public comment, prior publication, and delay effective under 5 U.S.C. 553 of the Administrative Procedure Act (''APA''). The provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), which apply when notice and comment are required by the APA or another statute, are not applicable.

On behalf of the Commission.

Dated: October 22, 2009.

Steven T. Walther,

Chairman, Federal Election Commission.

[FR Doc. E9–25900 Filed 10–27–09; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM416; Special Conditions No. 25–393–SC]

Special Conditions: Bombardier Model Challenger CL–600–2B16 (CL–605, Ref. Note 9 of TC No. A21EA); Enhanced Flight Vision System (EFVS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Bombardier Model CL–600–2B16 (CL–605) airplane. This airplane, as modified by Rockwell Collins Aerospace & Electronics, Inc., will have an Enhanced Flight Vision System (EFVS). The EFVS is a novel or unusual design feature which consists of a head-up display (HUD) system modified to display forward-looking infrared (FLIR) radar imagery. The airworthiness regulations applicable to pilot compartment view do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 9, 2009. We must receive your comments by December 14, 2009.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM416, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM416. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Dale Dunford, FAA, ANM–111, Airplane and Flight Crew Interface, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2239; fax (425) 227–1320; e-mail: *dale.dunford@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has determined that the substance of these special conditions has previously

been subject to the public-comment process. These particular special conditions were recently issued and only three non-substantive comments were received during the public-comment period. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on these special conditions, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

On November 28, 2008, Rockwell Collins Aerospace & Electronics, Inc., applied for a supplemental type certificate for installation of a HUD/EFVS system in the Bombardier Model CL–600–2B16 (CL–605). The Model No. CL–600–2B16 (CL–605) is a transport category airplane certified to carry a maximum of 19 passengers and a minimum of 2 crew members. The Model CL–605 is a marketing designation for the Challenger CL–600–2B16 (CL–604 Variant) with Modsums 604DX10000, 604DX20000 and 604DX30000 incorporated, beginning with aircraft S/N 5701 and subsequent numbers. The modification involves the installation of an EFVS. This system consists of a Rockwell Collins HUD system, modified to display FLIR imagery, and an FLIR camera.

The electronic infrared image displayed between the pilot and the forward windshield represents a novel or unusual design feature in the context of 14 CFR 25.773. Section 25.773 was not written in anticipation of such technology. The electronic image has the potential to enhance the pilot's awareness of the terrain, hazards, and airport features. At the same time, the image may partially obscure the pilot's direct outside-compartment view. Therefore, the FAA needs adequate safety standards to evaluate the EFVS to determine that the imagery provides the intended visual enhancements without undue interference with the pilot's outside-compartment view. The FAA intends that the pilot be able to use a combination of the information, seen in the image and the natural view of the outside scene appearing beyond and through the image, as safely and effectively as a pilot-compartment view without an EFVS image and that is compliant with § 25.773.

Although the FAA has determined that the existing regulations are not adequate for certification of EFVSs, the FAA believes that EFVSs could be certified through the application of appropriate safety criteria. Therefore, the FAA has determined that special conditions should be issued for certification of EFVS to provide a level of safety equivalent to that provided by the standard in § 25.773.

Note: The term ''enhanced vision system'' (EVS) has been commonly used to refer to a system comprised of a HUD, imaging sensor(s), and avionics interfaces that display the sensor imagery on the HUD, and overlay it with alpha-numeric and symbolic flight information. However, the term has also been commonly used in reference to systems that display the sensor imagery, with or without other flight information, on a head-down display. To avoid confusion, the FAA created the term ''Enhanced Flight Vision System'' (EFVS) to refer to certain EVS systems that meet the requirements of the new operational rules—in particular the requirement for a HUD and specified flight information—and can be used to determine ''enhanced flight vision.'' An EFVS can be considered a subset of systems otherwise labeled EVS.

On January 9, 2004, the FAA published revisions to operational rules in 14 CFR parts 1, 91, 121, 125, and 135 to allow aircraft to operate below certain altitudes during a straight-in instrument approach while using an EFVS to meet visibility requirements.

Prior to this rule change, the FAA issued Special Conditions 25–180–SC, which approved the use of an EVS on Gulfstream Model G–V airplanes. These special conditions addressed the requirements for the pilot-compartment view and limited the scope of the intended functions permissible under the operational rules at the time. The intended function of the EVS imagery was to aid the pilot during instrument approach, and to allow the pilot to detect and identify the visual references for the intended runway down to 100 feet above the touchdown zone. However, the EVS imagery alone was not to be used as a means to satisfy visibility requirements below 100 feet.

The recent operational-rule change expands the permissible application of certain EVSs that are certified to meet the new EFVS standards. The new rule allows the use of EFVSs for operation below the minimum descent altitude (MDA) or decision height (DH) to meet new visibility requirements of § 91.175(l). The purpose of this special condition is not only to address the issue of the ''pilot-compartment view,'' as was done by 25–180–SC, but also to define the scope of intended function consistent with § 91.175(l) and (m).

Type Certification Basis

Under the provisions of 14 CFR 21.101, Rockwell Collins Aerospace & Electronics, Inc., must show that the Bombardier Model CL–600–2B16 (CL–605), as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A21EA or the applicable regulations in effect on the date of application for change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type-certification basis.'' The regulations incorporated by reference in A21EA are as follows:

Model CL–600–2B16 (604 Variant)

Part 25 dated February 1, 1965, including Amendments 25–1 through 25–78 with the following exceptions at Amendment:

- 25–37 for §§ 25.109, 25.149, 25.365, 25.561, 25.625, 25.701, 25.772, 25.783 (except § 25.783(f)), 25.785 (except § 25.785(g)), 25.789, 25.791, 25.801, 25.803, 25.807, 25.809, 25.811, 25.812, 25.813, 25.831, 25.853, 25.855, 25.857, 25.1307, 25.1359, 25.1415, and 25.1419;
- 25–37 for existing installations and Amendment 25–78 for new installations for §§ 25.963, 25.965, 25.994, 25.997, and 25.1438;
- 25–38 for §§ 25.787 and 25.1439;
- 25–40 for § 25.973;
- 25–37 for § 25.109 (see note 7);
- 25–44 for § 25.1413;
- 25–54 for § 25.851;
- 25–80 for § 25.1316.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Bombardier Model CL–600–2B16

(CL–605), because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Bombardier Model CL–600–2B16 (CL–605) must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should Rockwell Collins Aerospace & Electronics, Inc. (the applicant), apply for a supplemental type certificate to modify any other model, included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

The Bombardier Model CL–600–2B16 (CL–605) airplanes will incorporate EFVS, which is a novel or unusual design feature, because it projects a video image derived from an FLIR camera through the HUD. The EFVS image is projected in the center of the ''pilot-compartment view,'' which is governed by § 25.773. The image is displayed with HUD symbology and overlays the forward outside view. Therefore, § 25.773 does not contain appropriate safety standards for the EFVS display.

Operationally, during an instrument approach, the EFVS image is intended to enhance the pilot's ability to detect and identify ''visual references for the intended runway'' [*see* § 91.175(l)(3)] to continue the approach below DH or MDA. Depending on atmospheric conditions and the strength of infrared energy emitted and/or reflected from the scene, the pilot can see these visual references in the image better than through the window without EFVS.

Scene contrast detected by infrared sensors can be much different from that detected by natural pilot vision. On a dark night, thermal differences of objects, which are not detectable by the naked eye, will be easily detected by many imaging infrared systems. On the other hand, contrasting colors in visual wavelengths may be distinguished by the naked eye, but not by an imaging infrared system. Where thermal contrast in the scene is sufficiently detectable, the pilot can recognize shapes and patterns of certain visual references in the infrared image. However, depending on conditions, those shapes and patterns in the infrared image can appear significantly different than they would with normal vision. Considering these factors, the EFVS image needs to be evaluated to determine that the pilot can interpret it accurately.

The image may improve the pilot's ability to detect and identify items of interest. However, the EFVS needs to be evaluated to determine that the imagery allows the pilot to perform the normal duties of the flight crew and adequately see outside the window through and beyond the EFVS image, consistent with the safety intent of § 25.773(a)(2).

Compared to a HUD displaying the EFVS image and symbology, a HUD that only displays stroke-written symbols is easier to see through. Stroke symbology illuminates a small fraction of the total display area of the HUD, leaving much of that area free of reflected light that could interfere with the pilot's view out the window through and beyond the display. However, unlike stroke symbology, the video image illuminates most of the total display area of the HUD (approximately 30 degrees horizontally and 25 degrees vertically), which is a significant fraction of the pilot compartment view. The pilot cannot see around the larger illuminated portions of the video image, but must see the outside scene through it.

Unlike the pilot's external view, the EFVS image is a monochrome, two-dimensional display. Many, but not all, of the depth cues found in the natural view are also found in the image. The quality of the EFVS image and the level of EFVS infrared sensor performance could depend significantly on conditions of the atmospheric and external light sources. The pilot needs adequate control of sensor gain and image brightness, which can significantly affect image quality and transparency (*i.e.,* the ability to see the outside view through and beyond the image). Certain system characteristics could create distracting and confusing display artifacts. Finally, because this is a sensor-based system intended to provide a conformal perspective corresponding with the outside scene, the system must be able to ensure accurate alignment.

Hence, safety standards are required for each of the following factors:

- An acceptable degree of image transparency;
- Image alignment;
- Lack of significant distortion; and
- The potential for pilot confusion or misleading information.

Section 25.773—Pilot Compartment View, specifies that ''Each pilot compartment must be free of glare and reflection that could interfere with the normal duties of the minimum flight crew * * *.'' In issuing § 25.773, the FAA did not anticipate the development of EFVSs and does not consider § 25.773 to be adequate to address the specific issues related to such a system. Therefore, the FAA has determined that special conditions are needed to address the specific issues particular to the installation and use of an EFVS.

Discussion

The EFVS is intended to function by presenting an enhanced view during the approach. This enhanced view would help the pilot see and recognize external visual references, as required by § 91.175(l), and to visually monitor the integrity of the approach, as described in FAA Order 6750.24D (''Instrument Landing System and Ancillary Electronic Component Configuration and Performance Requirements,'' dated March 1, 2000).

Based on this approved functionality, users would seek to obtain operational approval to conduct approaches—including approaches to Type I runways—in visibility conditions much lower than those for conventional Category I.

The purpose of these special conditions is to ensure that the EFVS to be installed performs the following functions:

- Present an enhanced view that aids the pilot during the approach.
- Provide enhanced flight visibility to the pilot that is no less than the visibility prescribed in the standard, instrument-approach procedure.
- Display an image that the pilot can use to detect and identify the ''visual references for the intended runway'' required by § 91.175(l)(3), to continue the approach with vertical guidance to 100-feet height above the touchdown-zone elevation.

Depending on the atmospheric conditions and the particular visual references that happen to be distinctly visible and detectable in the EFVS image, these functions would support its use by the pilot to visually monitor the integrity of the instrument-approach path.

Compliance with these special conditions does not affect the applicability of any of the requirements of the operating regulations (*i.e.,* 14 CFR parts 91, 121, and 135). Furthermore, use of the EFVS does not change the approach minima prescribed in the standard instrument approach

procedure being used; published minima still apply.

The FAA certification of this EFVS is limited as follows:

• The infrared-based EFVS image will not be certified as a means to satisfy the requirements for descent below 100 feet height above touchdown (HAT).

• The EFVS may be used as a supplemental device to enhance the pilot's situational awareness during any phase of flight or operation in which its safe use has been established.

An EFVS image may provide an enhanced image of the scene that may compensate for any reduction in the clear outside view of the visual field framed by the HUD combiner. The pilot must be able to use this combination of information displayed in the image and the natural view of the outside scene, seen through the image, as safely and effectively as the pilot would use a § 25.773-compliant pilot-compartment view without an EVS image. This is the fundamental objective of the special conditions.

The FAA also applies additional certification criteria, not as special conditions, for compliance with related regulatory requirements, such as § 25.1301 and § 25.1309. These additional criteria address certain image characteristics, installation, demonstration, and system safety.

Image-characteristic criteria include the following:

• Resolution,
• Luminance,
• Luminance uniformity,
• Low level luminance,
• Contrast variation,
• Display quality,
• Display dynamics (*e.g.,* jitter, flicker, update rate, and lag), and
• Gain and brightness controls.

Installation criteria address visibility and access to EFVS controls and integration of EFVS in the cockpit.

The EFVS demonstration criteria address the flight and environmental conditions that need to be covered.

The FAA also intends to apply certification criteria relevant to high-intensity radiated fields (HIRF) and lightning protection.

Applicability

As discussed above, these special conditions are applicable to the Bombardier Model CL–600–2B16 (CL–605) airplane. Should Rockwell Collins Aerospace & Electronics, Inc., apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate, to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the Bombardier Model CL–600–2B16 (CL–605) airplane, as modified by Rockwell Collins Aerospace & Electronics, Inc. It is not a rule of general applicability and affects only the applicant that applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the amended type certification basis for Bombardier Model CL–600–2B16 (CL–605) airplanes, modified by Rockwell Collins Aerospace & Electronics, Inc.:

1. The EFVS imagery on the HUD must not degrade the safety of flight or interfere with the effective use of outside visual references for required pilot tasks during any phase of flight in which it is to be used.

2. To avoid unacceptable interference with the safe and effective use of the pilot compartment view, the EFVS device must meet the following requirements:

a. The EFVS design must minimize unacceptable display characteristics or artifacts (*e.g.*, noise, ''burlap'' overlay, running water droplets) that obscure the desired image of the scene, impair the pilot's ability to detect and identify visual references, mask flight hazards, distract the pilot, or otherwise degrade task performance or safety.

b. Control of EFVS display brightness must be sufficiently effective in dynamically changing background (ambient) lighting conditions to prevent full or partial blooming of the display that would distract the pilot, impair the pilot's ability to detect and identify visual references, mask flight hazards, or otherwise degrade task performance or safety. If automatic control for image brightness is not provided, it must be shown that a single manual setting is satisfactory for the range of lighting conditions encountered during a time-critical, high-workload phase of flight (*e.g.*, low-visibility instrument approach).

c. A readily accessible control must be provided that permits the pilot to immediately deactivate and reactivate EFVS image display on demand.

d. The EFVS image on the HUD must not impair the pilot's use of guidance information, or degrade the presentation and pilot awareness of essential flight information displayed on the HUD, such as alerts, airspeed, attitude, altitude and direction, approach guidance, windshear guidance, TCAS resolution advisories, or unusual-attitude recovery cues.

e. The EFVS image and the HUD symbols, which are spatially referenced to the pitch scale, outside view, and image, must be scaled and aligned (*i.e.*, conformal) to the external scene. In addition, the EFVS image and the HUD symbols—when considered singly or in combination—must not be misleading, cause pilot confusion, or increase workload. Airplane attitudes or cross-wind conditions may cause certain symbols (*e.g.*, the zero-pitch line or flight-path vector) to reach field-of-view limits, such that they cannot be positioned conformally with the image and external scene. In such cases, these symbols may be displayed, but with an altered appearance that makes the pilot aware they are no longer displayed conformally, such as with ''ghosting.''

f. A HUD system that displays EFVS images must, if previously certified, continue to meet all of the requirements of the original approval.

3. The safety and performance of the pilot tasks associated with the use of the pilot-compartment view must not be degraded by the display of the EFVS image. These tasks include the following:

a. Detection, accurate identification, and maneuvering, as necessary, to avoid traffic, terrain, obstacles, and other hazards of flight.

b. Accurate identification and utilization of visual references required

for every task relevant to the phase of flight.

4. Compliance with these special conditions will enable the EFVS to be used during instrument approaches in accordance with 14 CFR 91.175(l) such that it may be found acceptable for the following intended functions:

a. Presenting an image that would aid the pilot during a straight-in instrument approach.

b. Enabling the pilot to determine the ''enhanced flight visibility,'' as required by § 91.175(l)(2), for descent and operation below MDA and DH.

c. Enabling the pilot to use the EFVS imagery to detect and identify the ''visual references for the intended runway,'' required by § 91.175(l)(3), to continue the approach with vertical guidance to 100-feet height above touchdown-zone elevation.

5. Use of EFVS for instrument-approach operations must be in accordance with the provisions of § 91.175(l) and (m). Appropriate limitations must be stated in the Operating Limitations section of the Airplane Flight Manual to prohibit the use of the EFVS for functions that have not been found to be acceptable.

Issued in Renton, Washington, on October 9, 2009.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–25493 Filed 10–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0952; Directorate Identifier 2009–SW–04–AD; Amendment 39–16055; AD 2009–22–04]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France (ECF) Model EC 155B and EC155B1 Helicopters

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the specified ECF model helicopters. This AD results from a mandatory continuing airworthiness information (MCAI) AD issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI AD states that freezing of the route display on the navigation display (ND) in the Sector mode occurs for flight plans that include procedures in the terminal zone (departure or arrival). The MCAI AD prohibits the use of the UNS–1D navigation system (also known as the Flight Management System (FMS)) for Standard Instrument Departure (SID), Standard Instrument Terminal Arrival Route (STAR), and instrument approach procedures. The actions are intended to prevent the flight crew from relying on a frozen route ND, unanticipated increases in flight crew workload, pilot confusion in the terminal airspace environment, and subsequent loss of control of the helicopter.

DATES: This AD becomes effective on November 12, 2009.

We must receive comments on this AD by December 28, 2009.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone 800–232–0323, fax (972) 641–3710 or at *http://www.eurocopter.com.*

Examining the Docket: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is stated in the **ADDRESSES** section of this AD. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: DOT/FAA Southwest Region, George Schwab, ASW–111, Aviation Safety Engineer, Rotorcraft Directorate, Safety Management Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5114, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Discussion

EASA, which is the Technical Agent for the Member States of the European Community, has issued EASA AD No. 2009–0035–E, dated February 18, 2009, to correct an unsafe condition for the Model EC 155 B and B1 helicopters.

The route display on the ND in the Sector mode is no longer refreshed if the flight plan, processed and transmitted by the UNS–1D FMS, contains a procedure that includes a holding pattern or a Distance Measurement Equipment arc. Only the route display on the ND in the Sector mode is affected. The navigation and guidance parameter displays on the ND, the flight plan display on the UNS–1D, and the coupling to the autopilot are not affected. Freezing of the route display only occurs for flight plans that include procedures in the terminal zone (departure and arrival). If not corrected, unanticipated freezing of the route display during operations under IFR conditions, particularly during instrument meteorological conditions, would result in a significant increase in flight crew workload, causing pilot confusion in the more crowded terminal airspace environment and affecting the safety of the helicopter and its occupants. For those reasons, the MCAI AD prohibits the use of the UNS–1D navigation system for SID and STAR procedures. The Rotorcraft Flight Manual (RFM) currently prohibits the use of the GPS for approach procedures.

You may obtain further information by examining the MCAI AD and any related service information in the AD docket.

Related Service Information

Eurocopter has issued an Emergency Alert Service Bulletin No. 04A008, dated February 17, 2009. The service information specifies prohibiting the use of the UNS–1D navigation system for SID and STAR and for instrument approach procedures. The actions described in the MCAI AD are intended to correct the same unsafe condition as that identified in the service information.

FAA's Evaluation and Unsafe Condition Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, their technical agent, has notified us of the unsafe condition described in the MCAI

AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

Differences Between This AD and the MCAI AD

We state the actions in this AD rather than referencing the Eurocopter Emergency Alert Service Bulletin for installing the placard. Also, we allow the limitations to be made by making pen and ink changes to the Limitations section of the RFM.

Costs of Compliance

We estimate that this AD will affect about 5 helicopters of U.S. registry. We also estimate that it will take about ¼ work-hour per helicopter to install the placard and amend the RFM. The average labor rate is $80 per work-hour. Required parts will cost about $5 per helicopter. Based on these figures, we estimate the cost of this AD on U.S. operators will be $125.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. We find the risk to the flying public justifies waiving notice and comment prior to adopting this rule because of the short compliance time and the failure of the ND display in the Sector mode that would likely result in a significant increase in flight crew workload, pilot confusion, and subsequent loss of control of the helicopter. Therefore, we have determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. However, we invite you to send us any written data, views, or arguments concerning this AD. Send your comments to an address listed under the **ADDRESSES** section of this AD. Include ''Docket No. FAA–2009–0952; Directorate Identifier 2009–SW–04–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on product(s) identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2009–22–04 Eurocopter France: Amendment 39–16055. Docket No. FAA–2009–0952; Directorate Identifier 2009–SW–04–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on November 12, 2009.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Model EC 155B and EC155B1 helicopters, all serial numbers, with the UNS–1D navigation system installed, certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) AD states that freezing of the route display on the navigation display in the Sector mode of the UNS–1D Flight Management System occurs when flight plans include procedures in the terminal zone (departure or arrival).

Actions and Compliance

(e) Before further flight, unless already accomplished, do the following:

(1) Make pen and ink changes, or insert a copy of this AD or an amended copy of Rotorcraft Flight Manual Supplement (RFM) 58 into the operating limitations section of the RFM with the following limitation: ''USING FMS FOR SIDS, STARS AND INSTRUMENT APPROACHES IS PROHIBITED.''

(2) Make a placard with black letters on white background with the following wording: ''USING FMS FOR SIDS, STARS AND INSTRUMENT APPROACHES IS PROHIBITED.'' Install the placard on the console in place of the placard ''USING GPS FOR INSTRUMENT APPROACHES IS PROHIBITED.''

Differences Between This AD and the MCAI AD

(f) We state the actions in this AD rather than referencing the Emergency Alert Service Bulletin for installing the placard. Also, we allow the limitations to be made by making pen and ink changes to the Limitations section of the RFM.

Other Information

(g) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, ATTN: DOT/FAA Southwest Region, George Schwab, ASW–111, Aviation Safety Engineer, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5114, fax (817) 222–5961, has the authority to approve AMOCs

for this AD, if requested using the procedures found in 14 CFR 39.19.

(h) Ferry flight permits are not permitted.

Related Information

(i) European Aviation Safety Agency (EASA) MCAI AD No. 2009–0035–E, dated February 18, 2009, and Eurocopter Emergency Alert Service Bulletin 04A008, dated February 17, 2009, contain related information.

Joint Aircraft System/Component (JASC) Tracking Code

(j) JASC Code 3460 Navigation—UNS–1D Navigation System—Limitation.

Issued in Fort Worth, Texas, on September 16, 2009.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E9–25441 Filed 10–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1253; Airspace Docket No. 08–ANE–103]

Establishment of Class E Airspace; Nantucket, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E Airspace at Nantucket Memorial Airport, Nantucket, MA, by establishing Class E Surface airspace designated as an extension to Class D airspace. This action will encompass the new Standard Instrument Approach Procedures (SIAPs) and enhance the safety and management of Instrument Flight Rules (IFR) around the Nantucket Memorial Airport, MA.

DATES: Effective 0901 UTC, February 11, 2010. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, Airspace Specialist, Operations Support Group, Eastern Service Center, Air Traffic Organization, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5581.

SUPPLEMENTARY INFORMATION:

History

On February 12, 2009, the FAA proposed to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing the Class E airspace extending upward from the surface at Nantucket Memorial Airport, Nantucket, MA (74 FR 7011). Interested parties are invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Class E surface airspace designations as extensions to Class D (Class E4 airspace) are published in Paragraph 6004 of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Nantucket, MA. This action provides adequate Class E airspace (IFR) operations at Nantucket Memorial Airport. Area Navigation (RNAV) Global Positioning System (GPS) (SIAPs) have been developed for Nantucket Memorial Airport, and as a result, Class E surface airspace is required to the northeast of the airport, designated as an extension of the Class D surface area.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

■ 1. The authority citation for Part 71 will continue to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 14, 2009, is amended as follows:

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D Surface Area.

* * * * *

ANE MA E4 Nantucket, MA [NEW]

Nantucket Memorial Airport, MA
(Lat. 41°15′11″ N., long. 70°03′37″ W.)

That airspace extending upward from the surface of the Earth within 1.5 mile either side of the 045° bearing from the Nantucket Memorial Airport extending from the 4.2 mile radius to 12.6 miles Northeast of the airport. This Class E Surface airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on October 15, 2009.

Michael Vermuth,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E9–25500 Filed 10–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0653; Airspace Docket 09–ASO–22]

Modification of Class E Airspace; Anniston, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action modifies the Class E airspace at Anniston Metropolitan Airport in Anniston, AL. After a new RNAV (GPS) Z approach was developed for Runway 23, it was determined that the Class E airspace at the airport should be modified to facilitate a more efficient operation. This rule increases

the safety and management of the National Airspace System (NAS) around Anniston Metropolitan Airport.

DATES: Effective 0901 UTC, December 17, 2009. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments should be received no later that December 14, 2009.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building, Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2009–0653; Airspace Docket No. 09–ASO–22, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit and adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0653; Airspace Docket No. 09–ASO–22.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to title 14, Code of Federal Regulations (14 CFR) part 71 modifies Class E2 and E5 airspace at Anniston, AL by expanding the controlled airspace, extending upward from the surface of the Earth to support IFR operations at Anniston Metropolitan Airport. Additionally, the existing Class E airspace that extends upwards from 700 feet above the surface of the Earth (E5) will have its dimensions increased from a 12-mile radius to a 12.7-mile radius of the Anniston Metropolitan Airport.

Class E2 airspace designations for airspace areas extending upwards from the surface of the Earth and Class E5 airspace designations for airspace areas extending from 700 feet above the surface of the Earth are published in Paragraph 6002 and 6005 respectively of FAA Order 7400.9T, dated August 27, 2009 and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E2 and E5 airspace designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to

assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the Class E2 and E5 airspace at Anniston Metropolitan Airport in Anniston, AL.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, dated August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ASO AL E2 Anniston, AL [REVISED]

Anniston Metropolitan Airport, Anniston, AL
(Lat. 33°35′17″ N, long. 85°51′29″ W)

That airspace extending upward From the surface within 5.5 radius of Anniston Metropolitan Airport.

* * * * *

Paragraph 6005 Class E Airspace Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO AL E5 Anniston, AL [REVISED]

Anniston Metropolitan Airport, Anniston, AL
(Lat. 33°35′17″ N, long. 85°51′29″ W)
Talladega Municipal Airport
(Lat. 33°34′12″ N, long. 86°03′04″ W)
St. Clair County Airport
(Lat. 33°33′32″ N, long. 86°14′57″ W)

That airspace extending upward from 700 feet above the surface within a 12.7-mile radius of Anniston Metropolitan Airport and within a 9.5-mile radius of Talladega Municipal Airport and within a 11.5-mile radius of St. Clair County Airport, excluding that airspace within Restricted Area R–2101 when the restricted area is active.

* * * * *

Issued in College Park, Georgia, on October 15, 2009.

Michael Vermuth,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E9–25498 Filed 10–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30692 Amdt. No 3344]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 28, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 28, 2009.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPs. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format, make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This

amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPs). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPs, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on October 16, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 19 November 2009

Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS OR LOC RWY 27L, ILS RWY 27L (CAT II), Amdt 16
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS PRM RWY 27L, ILS PRM RWY 27L (CAT II) (Simultaneous Close Parallel), Amdt 1
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, RNAV (GPS) Y RWY 27L, Amdt 3
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, RNAV (RNP) Z RWY 27L, Amdt 1
Cochran, GA, Cochran, RNAV (GPS) RWY 11, Orig
Sterling, PA, Spring Hill, Takeoff Minimums and Obstacle DP, Amdt 1
Aberdeen, SD, Aberdeen Rgnl, VOR/DME RWY 13, Amdt 13A
Orange, TX, Orange County, VOR/DME RWY 22, Amdt 2

Effective 17 December 2009

Nogales, AZ, Nogales Intl, NOGALES ONE Graphic Obstacle DP
Scottsdale, AZ, Scottsdale, RNAV (GPS)–E, Orig
Meeker, CO, Meeker, RNAV (GPS) RWY 3, Orig-B
Telluride, CO, Telluride Rgnl, LOC/DME RWY 9, Amdt 1
Oxford, CT, Waterbury-Oxford, NDB RWY 18, Amdt 6, CANCELLED
Naples, FL, Naples Muni, RNAV (GPS) RWY 5, Amdt 2
Naples, FL, Naples Muni, RNAV (GPS) RWY 23, Amdt 1
West Palm Beach, FL, Palm Beach Intl, Takeoff Minimums and Obstacle DP, Amdt 3
Boise, ID, Boise Air Terminal/Gowen Fld, RNAV (RNP) Z RWY 10L, Orig-A
Boise, ID, Boise Air Terminal/Gowen Fld, RNAV (RNP) Z RWY 10R, Orig-A
Boise, ID, Boise Air Terminal/Gowen Fld, RNAV (RNP) Z RWY 28L, Orig-A
Boise, ID, Boise Air Terminal/Gowen Fld, RNAV (RNP) Z RWY 28R, Orig-A
Mountain Home, ID, Mountain Home Muni, NDB RWY 28, Amdt 3
Mountain Home, ID, Mountain Home Muni, RNAV (GPS) RWY 28, Orig
Pocatello, ID, Pocatello Rgnl, KNURL ONE Graphic Obstacle DP
Twin Falls, ID, Joslin Field-Magic Valley Rgnl, ILS OR LOC RWY 25, Amdt 9
Alma, MI, Gratiot Community, SDF RWY 9, Amdt 8, CANCELLED
Alma, MI, Gratiot Community, Takeoff Minimums and Obstacle DP, Orig
Brookfield, MO, North Central Missouri Rgnl, RNAV (GPS) RWY 18, Amdt 1
Brookfield, MO, North Central Missouri Rgnl, RNAV (GPS) RWY 36, Amdt 1
Brookfield, MO, North Central Missouri Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Cut Bank, MT, Cut Bank Muni, Takeoff Minimums and Obstacle DP, Orig
Cross Keys, NJ, Cross Keys, Takeoff Minimums and Obstacle DP, Amdt 1
Perkasie, PA, Pennridge, RNAV (GPS) RWY 8, Amdt 1
Cheraw, SC, Cheraw Muni/Lynch Bellinger Field, NDB RWY 26, Amdt 2, CANCELLED
Odessa, TX, Odessa-Schlemeyer Field, Takeoff Minimums and Obstacle DP, Amdt 1
Logan, UT, Logan-Cache, LOGAN ONE Graphic Obstacle DP
Logan, UT, Logan-Cache, Takeoff Minimums and Obstacle DP, Amdt 8
Barre/Montpelier, VT, Edward F. Knapp State, GPS RWY 35, Orig-A, CANCELLED
Barre/Montpelier, VT, Edward F. Knapp State, RNAV(GPS) RWY 35, Orig
Everett, WA, Snohomish County (Paine Fld), RNAV (GPS) RWY 16R, Orig-A
Yakima, WA, Yakima Air Terminal/ McAllister Field, ILS Y RWY 27, Orig
Yakima, WA, Yakima Air Terminal/ McAllister Field, ILS Z RWY 27, Amdt 27
Yakima, WA, Yakima Air Terminal/ McAllister Field, LOC/DME BC–B, Amdt 3
Yakima, WA, Yakima Air Terminal/ McAllister Field, RNAV (GPS) Y RWY 27, Orig
Yakima, WA, Yakima Air Terminal/ McAllister Field, RNAV (GPS) Z RWY 27, Orig
Yakima, WA, Yakima Air Terminal/ McAllister Field, VOR–A, Amdt 7
Yakima, WA, Yakima Air Terminal/ McAllister Field, VOR/DME OR TACAN RWY 27, Amdt 8

[FR Doc. E9–25488 Filed 10–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30693; Amdt. No. 3345]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 28, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 28, 2009.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125), telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on October 16, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

Effective Upon Publication

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
19–Nov–09	SD	HURON	HURON REGIONAL	9/2314	9/22/09	RNAV (GPS) RWY 30, AMDT 1.
19–Nov–09	AL	HAMILTON	MARION COUNTY–RANKIN FITE.	9/2958	10/3/09	RNAV (GPS) RWY 18, ORIG–A.
17–Dec–09	WA	EVERETT	SNOHOMISH COUNTY (PAINE FLD).	9/3976	10/7/09	VOR/DME RWY 16R, ORIG.
17–Dec–09	WA	EVERETT	SNOHOMISH COUNTY (PAINE FLD).	9/3977	10/7/09	VOR RWY 16R, ORIG.

[FR Doc. E9–25489 Filed 10–27–09; 8:45 am]
BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0760; FRL–8436–6]

Ulocladium oudemansii (U3 Strain); Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the microbial fungicide, *Ulocladium oudemansii* (U3 Strain), in or on all food commodities when applied or used pre-harvest only, and excluding applications made post-harvest or to processed commodities. Botry-Zen, Ltd. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Ulocladium oudemansii* (U3 Strain).

DATES: This regulation is effective October 28, 2009. Objections and requests for hearings must be received on or before December 28, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0760. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Denise Greenway, Biopesticides and Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8263; e-mail address: *greenway.denise@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0760 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 28, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked

confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2008–0760, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of November 14, 2008 (73 FR 67512) (FRL–8388–3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 7F7269) by Botry-Zen, Ltd., 21 Willis St., P.O. Box 5664, Dunedin, New Zealand. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Ulocladium oudemansii* (U3 Strain). This notice stated that a summary of the petition prepared by the petitioner, Botry-Zen, Ltd., was included in the docket. In response to EPA's notice announcing the filing of this petition, one comment was received from an anonymous person. The commenter complained of perceived inadequacy regarding the Agency's assessment of the subject petition, expressed dissatisfaction with the Agency's overall history concerning pesticide petition approvals, EPA's ability to protect the health of the American public, and opined that human testing should be conducted on the subject active ingredient. The commenter did not provide, however, any information in support of his/her position or specify the desired human studies assessment parameter(s). Before issuing any tolerance exemption, the Agency examines the potential effects of the pesticide on humans and the environment. For this particular microbial pesticide, EPA conducted a comprehensive assessment of *Ulocladium oudemansii* (U3 Strain), including a review of the acceptable studies and other supporting information addressing the potential effects of this pesticide. EPA's review of these data and information indicated that the active ingredient is not toxic to test animals when administered via the oral, dermal, or intraperitoneal routes of exposure and is unlikely under the conditions of use to be a human health hazard by the pulmonary route because the large aggregated fungal spore material is not respirable. Also, there was no evidence that the active ingredient is a mutagen. In addition, the active ingredient was not infective or pathogenic to test animals when administered via the oral, dermal or intravenous routes. Moreover, growth temperature analysis has shown that *Ulocladium oudemansii* (U3 strain) does not grow above 30 °C, making infection of humans and other mammals having normal body temperatures above 37 °C unlikely. No reports of hypersensitivity have been recorded in personnel working with this organism. Based on these data, the Agency has concluded that there is a reasonable certainty that no harm will result from dietary exposure to residues of *Ulocladium oudemansii* (U3 Strain), when applied or used pre-harvest only in or on all food commodities (excluding applications made post-harvest or to processed commodities). Thus, under the standard in FFDCA section 408(c)(2), an exemption from the requirement of a tolerance is appropriate.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.... '' Additionally, section 408(b)(2)(D) of FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues '' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Ulocladium oudemansii is a naturally occurring soil saprophyte found worldwide. The subject of this tolerance exemption, *Ulocladium oudemansii* (U3 strain), was originally isolated from kiwifruit leaf litter debris in 1995 from a Massey University kiwifruit research plot in New Zealand. The active ingredient is the asexual spore of the soil saprophytic fungus *Ulocladium oudemansii*. *Ulocladium oudemansii* (U3 Strain) is a fungicide intended for the control of the plant pathogens, *Botrytis cinerea* and *Sclerotinia sclerotiorumn*, when applied pre-harvest to growing fruit and vegetable crops or ornamental plants. The organism controls the pathogens by occupying their ecological niche, in dead and senescent plant material, and out-competing them for space and nutrients. *Ulocladium oudemansii* (U3 strain) is non-invasive and does not damage living plant tissue.

An acceptable acute oral toxicity/pathogenicity study performed in rats (MRID 472465–03) demonstrated the lack of mammalian toxicity at tested levels of exposure to *Ulocladium oudemansii* (U3 Strain). In this study, *Ulocladium oudemansii* (U3 Strain) was not toxic, infective nor pathogenic to rats given an oral dose of 1×10^8 colony forming units (CFU) per animal. The study resulted in a classification of

Toxicity Category IV for this strain of *Ulocladium oudemansii*.

An acceptable acute intraperitoneal injection toxicity/pathogenicity study in rats (MRID 472465–02) demonstrated that *Ulocladium oudemansii* (U3 Strain) was neither toxic, pathogenic nor infective to rats dosed intraperitoneally with greater than 10^7 CFU of the test material.

An acceptable acute dermal toxicity/pathogenicity study in rats (MRID 472465–04) demonstrated that *Ulocladium oudemansii* (U3 Strain) was not toxic, infective nor pathogenic to rats when treated dermally at 1 x 10^8 CFU/animal. There were no treatment-related clinical signs, dermal irritation, necropsy findings or changes in body weight. No test organism was recovered from blood, brain, kidney, liver, cervical lymph nodes or spleen of any animal. The study resulted in a classification of Toxicity Category III for this strain of *Ulocladium oudemansii*.

An acceptable acute eye irritation study in rabbits (MRID 472465–06) demonstrated that *Ulocladium oudemansii* (U3 Strain) administered at a purity of not less than 2 x 10^8 CFU/gram (g) and a minimum spore viability of 90% at 0.1 milliliter (ml)/animal is non-irritating. The study resulted in a classification of Toxicity Category IV for this strain of *Ulocladium oudemansii*.

An acceptable primary dermal irritation study in rabbits (MRID 472465–07) demonstrated that *Ulocladium oudemansii* (U3 Strain) administered at a purity of not less than 2 x 10^8 CFU/g and a minimum spore viability of 90% at 0.5 ml/animal is non-irritating. The study resulted in a classification of Toxicity Category IV for this strain of *Ulocladium oudemansii*.

An acceptable skin sensitization test in guinea pigs (MRID 472465–08) demonstrated that *Ulocladium oudemansii* (U3 Strain) administered at a purity of not less than 2 x 10^8 CFU/g and a minimum spore viability of 90% is not a dermal sensitizer. Furthermore, there have been no reports of hypersensitivity associated with *Ulocladium oudemansii* (U3 Strain).

Although not triggered by results of the Tier I toxicology studies, nor otherwise required, an acceptable bacterial reverse mutation study was submitted which showed the active ingredient to be non-mutagenic under test conditions in the tested species.

In addition to the acceptable toxicology studies summarized above, the Agency considered this other toxicology data and information in assessing the petitioner's tolerance exemption request.

Pulmonary Toxicity/Pathogenicity. A submitted acute pulmonary toxicity/pathogenicity study in rats (MRID 472465–05) did not satisfy the guideline requirement because the large aggregated fungal spore test material could not be manipulated into a particle size suitable for respiration in an inhalation study. The Agency notes that large particles such as these are unlikely to be inhaled and deposited in the pulmonary region, while any deposited in the naso-pharnygeal region are removed by coughing, sneezing or physical wiping from the nasal area. Particles deposited in the tracheobronchial region are removed by the mucocillary escalator system. Particles could be swallowed, but would represent no human health concern based on the lack of mammalian toxicity observed in the acceptable *Ulocladium oudemansii* (U3 Strain) acute oral toxicity/pathogenicity study cited above. The Agency concludes that, under conditions of use, *Ulocladium oudemansii* (U3 Strain) is unlikely to present a significant inhalation hazard to humans because the large aggregated fungal spore material is not respirable. In justifying its waiver request for this guideline study, Botry–Zen, Ltd. included in its rationale a discussion of the inability to dose test animals due both to the large size of the test particles and their rapid sedimentation in solution, and argued that any respirable dust or fines would not be expected to be toxic or irritating, based upon results from the acute oral and other submitted toxicology/pathogenicity studies summarized in this Unit. The presented rationale supports the Agency's decision to waive this data requirement.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

Ulocladium oudemansii, a common soil fungus, is ubiquitous in the environment and exists worldwide as a naturally-occurring saprophyte, i.e., an organism that lives and feeds on dead and decaying plant matter. The subject of this tolerance exemption, *Ulocladium oudemansii* (U3 strain), was originally isolated from kiwifruit leaf litter. Spores of *Ulocladium oudemansii* (U3 strain), when deposited under the suitable environmental conditions on dead or decaying plant debris, will germinate and colonize the necrotic plant tissue. But if such decayed vegetative matter is not available, or becomes exhausted, the fungus cannot survive. Therefore, despite its presence in soils, dietary exposure from the proposed use of *Ulocladium oudemansii* (U3 strain) will be minimal on food due to its limited viability in the absence of a decayed plant material nutrient source. Also, there are no known mycotoxins associated with *Ulocladium* species, and the submitted toxicological studies indicate no risk to human health from dietary exposure to *Ulocladium oudemansii* (U3 strain). Furthermore, the fungus produces no recognized toxins, enzymes or virulence factors normally associated with mammalian invasiveness or toxicity. Additionally, growth temperature analysis has shown that *Ulocladium oudemansii* (U3 strain) does not grow above 30 °C, making infection of humans and other mammals having normal body temperatures at or above 37 °C unlikely.

1. *Food*. As discussed above, *Ulocladium oudemansii* (U3 Strain) applied to food crops to control plant pathogens will not survive except on dead or decaying plant tissues. Food crops exhibiting such tissues are of poor quality, are not commonly consumed, and are not commercially marketed. Good quality food free of such decayed material will not support the fungus and so *Ulocladium oudemansii* (U3 Strain) residues would not be expected. Due to the limited survivability of *Ulocladium oudemansii* (U3 Strain) once its decayed plant material nutrient source is exhausted, dietary exposure to the naturally-occurring microbe from the proposed pre-harvest applications to food crops is unlikely. Even if oral exposure from ingestion of poor-quality treated crops should occur, the hazard posed to adults, infants and children from food-related exposures to *Ulocladium oudemansii* (U3 Strain) will be minimal due to the demonstrated lack of acute oral toxicity/pathogenicity associated with the microbial pesticide. Based on the evaluation of the submitted data, there are no dietary risks that exceed the Agency's level of concern.

2. *Drinking water exposure*. Exposure of humans to residues of *Ulocladium oudemansii* (U3 Strain) in consumed drinking water would be unlikely. *Ulocladium oudemansii* (U3 Strain) is not known to grow or thrive in aquatic environments. Potential exposure via surface water would be negligible and exposure via drinking water would be

impossible to measure. *Ulocladium oudemansii* (U3 Strain) is intended for use on agricultural and horticultural plants, and has limited survival potential once its carrier nutrient source is depleted. The risk of the microorganism passing through soil to groundwater is minimal to unlikely. Additionally, the fungus would not tolerate municipal drinking water treatment processes, such as chlorination, pH adjustment, high temperature and/or anaerobic conditions. More importantly, even if oral exposure to this ubiquitous microbe should occur through drinking water, due to its demonstrated lack of acute oral toxicity/pathogenicity, the Agency concludes that there is a reasonable certainty that no harm will result from such exposure.

B. Other Non-Occupational Exposure

The proposed pesticide uses of *Ulocladium oudemansii* (U3 Strain) being established by this rule are limited to commercial agricultural and horticultural settings. There are no residential uses.

The only other exposure is what people would normally encounter as part of the natural environment, not as a result of pesticide use. There have not been reports of disease or other effects from human exposure to *Ulocladium oudemansii* (U3 Strain) naturally present in soils.

V. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires the Agency, when considering whether to establish, modify, or revoke a tolerance, to consider ''available information'' concerning the cumulative effects of pesticide residues and ''other substances that have a common mechanism of toxicity.'' These considerations include the cumulative effects of such residues on infants and children. Because, there is no indication of mammalian toxicity from *Ulocladium oudemansii* (U3 Strain), the Agency concludes that *Ulocladium oudemansii* (U3 Strain) does not share a common mechanism of toxicity with other substances. Therefore, section 408(b)(2)(D)(v) does not apply.

VI. Determination of Safety for U.S. Population, Infants and Children

FFDCA section 408(b)(2)(C), as amended by the Food Quality Protection Act (FQPA) of 1996, provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) also provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children.

Based on the toxicity information discussed in Unit III., EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Ulocladium oudemansii* (U3 Strain). This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because the data available on *Ulocladium oudemansii* (U3 Strain) demonstrate a lack of toxicity/pathogenicity potential. *Ulocladium oudemansii* (U3 Strain) is not known to produce any recognized toxins, virulence factors or enzymes normally associated with mammalian invasiveness or toxicity. Thus, there are no threshold effects of concern and, as a result, the Agency has concluded that the additional tenfold margin of safety for infants and children is unnecessary in this instance.

VII. Other Considerations

A. Endocrine Disruptors

Ulocladium oudemansii is a ubiquitous organism in the environment. The subject of this tolerance exemption, *Ulocladium oudemansii* (U3 Strain), is non-toxic to mammals. To date, there is no evidence to suggest that *Ulocladium oudemansii* (U3 Strain) affects the immune system, functions in a manner similar to any known hormone, or that it acts as an endocrine disruptor. Indeed, the submitted toxicity/pathogenicity studies in rodents indicate that, following several routes of exposure, the immune system is intact and able to process and clear the active ingredient. Therefore, it is unlikely that this organism will have estrogenic or endocrine effects.

B. Analytical Method(s)

The Agency is establishing an exemption from the requirement of a tolerance for residues of *Ulocladium oudemansii* (U3 Strain), applied pre-harvest only, in or on all food commodities (excluding applications made post-harvest or to processed commodities), for the reasons stated above. Because the organism thrives on dead/decaying plant matter and does not damage living plant tissues, residues of *Ulocladium oudemansii* (U3 Strain) are not expected on food crops. Even if food crops carried such residues, the hazard posed from food-related exposures to *Ulocladium oudemansii* (U3 Strain) will be minimal due to the demonstrated lack of acute oral toxicity/pathogenicity associated with the microbial pesticide. Therefore, the Agency has concluded that an analytical method is not required for enforcement purposes for detecting *Ulocladium oudemansii* (U3 Strain) residues resulting from its pre-harvest use as a pesticide.

C. Codex Maximum Residue Level

No Codex maximum residue level exists for the microbial fungicide, *Ulocladium oudemansii* (U3 Strain).

VIII. Conclusions

There is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to residues of the *Ulocladium oudemansii* (U3 Strain) in or on all food and feed commodities when *Ulocladium oudemansii* (U3 Strain) is used as a pre-harvest-only microbial fungicide (thereby excluding applications made post-harvest or to processed commodities), in accordance with good agricultural practices. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because, as discussed above, no toxic effects to mammals have been observed.

IX. Statutory and Executive Order Reviews

This final rule establishes an exemption from tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB

approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

X. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 18, 2009.

Debra Edwards,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1292 is added to subpart D to read as follows:

§ 180.1292 Ulocladium oudemansii (U3 Strain); exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established in/on all food commodities for residues of *Ulocladium oudemansii* (U3 Strain), when applied or used pre-harvest-only, excluding applications made post-harvest or to processed commodities, as a microbial fungicide in accordance with good agricultural practices.

[FR Doc. E9–25969 Filed 10–27–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–1025; FRL–8434–5]

Cold Pressed Neem Oil; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the biochemical pesticide, cold pressed neem oil on all food commodities when applied/used on/in food commodities. Plasma Power Limited of India submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of cold pressed neem oil.

DATES: This regulation is effective October 28, 2009. Objections and requests for hearings must be received on or before December 28, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–1025. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Driss Benmhend, Biopesticides and Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9525; e-mail address: *benmhend.driss@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American

Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–1025 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 28, 2009.

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- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of November 2, 2007 (72 FR 62237) (FRL–8153–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 7F7249) by Plasma Power Limited of India, c/o OMC Ag Consulting, 828 Tanglewood Lane, East Lansing, MI 48823. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of cold pressed neem oil. The notice included a summary of the petition prepared by the petitioner, Plasma Power Limited of India. One comment was received in response to the notice of filing. The commenter objected to the petition and expressed concerns about EPA's regulation of human exposure to toxic chemicals. The Agency understands the commenter's concerns regarding toxic chemicals and the potential effects to humans when exposed to toxic chemicals. Pursuant to its authority under the FFDCA, and as discussed further in this unit, EPA conducted a comprehensive assessment of cold pressed neem oil, including a review of acute toxicity, mutagenicity and developmental studies. Based on these data, the Agency has concluded that there is a reasonable certainty that no harm will result from dietary exposure to residues of cold pressed neem oil when used in or on the food and feed commodities.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in sections 408(b)(2)(C) and (D) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Additionally, section 408(b)(2)(D) of FFDCA requires that the Agency consider ''available information concerning the cumulative effects'' of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Cold pressed neem oil is pressed directly from seeds of the neem tree (azadirachta indica), which is a tropical evergreen tree native to India and also found in other Southeast Asian and African countries. Cold pressed neem oil has a brown color, a bitter taste and a garlic/sulfur smell. A single seed may contain up to 50% oil by weight. Cold pressed neem oil contains various compounds that have insecticidal and medicinal properties. It is used in making shampoos, toothpaste, soaps, cosmetics, mosquito repellants, creams, lotions, and pet products such as pet shampoo. It also contains vitamin E, other essential amino acids and some percentages of fatty acids. Cold pressed neem oil is used for treating many skin diseases viz, eczema, psoriasis, skin allergies, etc. and is being studied for

making contraceptives in India (DAI, 2009).

Cold pressed neem oil is a mixture of several C26 terpenoids which are naturally occurring organic compounds composed of a five-carbon skeleton (simple terpenoids) or complex terpenoids with structures that possess between 20 and 40 carbon atoms. Azadirachtin is the most common terpenoid in cold pressed neem oil, the most thoroughly characterized and is a federally registered active ingredient pesticide. Cold pressed neem oil also contains steroids, fatty acids, and a number of essential oils.

Cold pressed neem oil has been used for hundreds of years in controlling plant pests and diseases (DAI, 2009). Research has demonstrated that the spray solution of cold pressed neem oil helps to control common pests such as white flies, aphids, scales, mealy bugs, spider mites, locusts, thrips, and Japanese beetles. Cold pressed neem oil is also used as a fungicide and helps control powdery mildew. Data submitted and reviewed by EPA show that cold pressed neem oil acts by affecting the insect's growth, thus preventing the larval stage to molt into an adult. It also acts as a repellent and feeding inhibitor by leaving a very bitter taste on sprayed plants, making them very distasteful for the insects to feed on.

Based on all the data submitted and available in the literature, the Agency determined that cold pressed neem oil and its components have low toxicity via all routes of exposure. Moreover, EPA conducted further modeling of potential residue on sprayed fruits and vegetables with 100% cold pressed neem oil and concluded that residues of cold pressed neem oil are very low and that these residues will decline rapidly (details in Unit III.A.)

All the data requirements to support a tolerance exemption were fulfilled by the applicant. EPA concluded that the data are acceptable and that no data gaps exist and no additional data are required. No acute, subchronic, or chronic toxicity endpoints were identified in guideline studies or in data obtained from the open technical literature. Moreover, cold pressed neem oil is not a mutagen, and is not a developmental toxicant. There are no known effects on endocrine systems via oral, dermal, or inhalation exposure.

1. *Acute toxicity (OPPTS Harmonized Guideline 870.1100–870.2600).* Tier I toxicity data submitted and reviewed showed that cold pressed neem oil is a Toxicity Category IV (low toxicity) compound via acute oral and acute inhalation routes of exposure. Cold pressed neem oil is in Toxicity Category III (slightly toxic) for acute dermal irritation. Cold pressed neem oil is not an eye or skin irritant, and it is not a dermal sensitizer.

2. *90–Day oral feeding (OPPTS Harmonized Guideline 870.3100).* To address this data requirement, the applicant submitted data obtained from the technical public literature in lieu of a guideline study. The study showed that test animals did not exhibit any clinical signs of toxicity that were statistically different from untreated controls. There were no significant changes in body weight, serum liver damage indicators, direct bilirubin and total bilirubin, or other blood parameters during the 90–day study period. The 90–day oral feeding LD_{50} is higher than 5,000 milligrams (mg) crude cold pressed neem oil/kilogram (kg) body weight. Based on the review of this data, EPA concluded that no subchronic oral toxicity is expected to occur when this compound is used in accordance with good agricultural practices.

3. *Tier I developmental toxicity (teratogenicity) (OPPTS Harmonized Guideline 870.3500).* Several technical public literature studies were submitted in lieu of guideline studies to satisfy the developmental toxicity data requirement.

In vitro studies showed that cold pressed neem oil may inhibit the development of two-cell mouse embryos (Juneja and Williams, 1993; Juneja *et al.*, 1994) and mouse sperm-egg interaction (Juneja and Williams, 1993). Sharma *et al.* (1996) found that a cold pressed neem oil fraction (designated NIM-76) placed in contact with cells *in vitro* selectively killed human sperm but did not affect normal cells of monkey kidney, human fetal lung, or peritoneal macrophages. In *in vivo* studies, Upadhyay *et al.* (1990) found that a single intrauterine dose of 100 µL of cold pressed neem oil inhibited pre-implantation in Wistar rats for up to 180 days. However, the effect was reversible, as treated rats regained fertility and delivered normal litters within 5 months post-treatment. A later study (Kaushic and Upadhyay, 1995) in rats showed that the anti-fertility effect of cold pressed neem oil was localized and 100 µL administered to one uterine horn produced abnormal cleavage. Subcutaneous application of cold pressed neem oil to cyclic rats produced significant damage to the luminal epithelium of the uterus and to the uterine glands (Tewari *et al.*, 1989). Glycogen and total protein in the ovary and uterus were also decreased. Ovariectomized rats administered cold pressed neem oil also showed decreased glycogen and protein content in the uterus, but when cold pressed neem oil was administered with or without estradiol dipropionate or progesterone, there were no significant differences between rats receiving cold pressed neem oil alone or in conjunction with the hormones. Tewari *et al.* (1989) concluded that the histological and biochemical changes seen were due to the toxicological potential of the cold pressed neem oil rather than to hormonal properties. Intravaginal application of a formulated product containing cold pressed neem oil (praneem polyherbal cream) was an effective contraceptive in rabbits up to 1 hour post-application, but was less effective after 90 minutes and ineffective after 12 hours (Garg *et al.*, 1993). The conception rate of monkeys receiving the cream was only 2.27%. In a three-generation reproduction study (Chinnasamy *et al.* (1993)) in which rats were fed a diet containing 10% cold pressed neem oil or 10% groundnut oil, the results from both matings in all three-generations did not show any adverse effects on the reproductive parameters of rats fed cold pressed neem oil compared to groundnut oil. No other toxicological effects were reported.

Based on the *in vitro* and *in vivo* studies, and subcutaneous and intravaginal applications of cold pressed neem oil, it seems that developmental toxicity may occur when exposure to cold pressed neem oil occurs by intravaginal, intrauterine, subcutaneous injection, or by direct exposure to mammalian sperm and eggs in *in vitro* laboratory studies. However, the three-generation study in rats fed cold pressed neem oil in the diet demonstrates that chronic oral ingestion of food commodities containing cold pressed neem oil residues will not result in any mammalian developmental toxicity. Therefore, no developmental toxicity is expected to occur from the use of cold pressed neem oil as a pesticide.

4. *Mutagenicity testing (OPPTS Harmonized Guideline 870.5100, 870.5300, and 870.5375).* The technical documents from the public literature and the guideline study submitted, performed using the TGAI as the test substance, showed no mutagenicity/genotoxicity effects.

Cold pressed neem oil and its components are not structurally related to known mutagens, nor do they belong to any chemical class of compounds containing known mutagens. Humans are regularly exposed to this substance via oral exposure (as a traditional folk medicinal product) and dermal exposure (when used on skin and hair)

at levels that are significantly greater than that which would be expected from the product as a pesticide under conditions of use. In addition, an extensive literature search of several scientific databases (i.e., ChemIDPlus, HSDB, Toxline, CCCRIS, DART, GENETOX, IRIS, ITER, LactMed, Multi-Database, TRI, HazMap, Household Products, TOXMAP and TOXNET) for the period 1980 to 2008 using cold pressed neem oil as the search parameter was unable to locate any other data/information regarding mutagenicity or genotoxicity of cold pressed neem oil. As a result, EPA concludes that cold pressed neem oil is not mutagenic or genotoxic.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

There is reasonable certainty that no harm to the U.S. population will result from aggregate exposure to residues of 100% cold pressed neem oil. This includes all exposures for which there is reliable information. The Agency arrived at this conclusion based on the low level of toxicity of cold pressed neem oil and the current use of cold pressed neem oil on skin in traditional medicinal products, cosmetics, and shampoos at levels that are substantially greater than that which would be expected from the product as a pesticide under conditions of use. The risks from aggregate exposure via oral, dermal and inhalation exposure are a compilation of three low-risk exposure scenarios (oral, dermal, and inhalation) and are negligible. Since there are no threshold effects of concern, and no known toxic endpoints, the provision requiring an additional margin of safety does not apply. Therefore, the Agency has not used a margin of exposure (MOE) (safety) approach to assess the safety of cold pressed neem oil.

A. Dietary Exposure

1. *Food*. The most likely human exposure to cold pressed neem oil will occur via dietary exposure (consumption) to treated fruits, seeds, or leafy vegetables. EPA modeling (using the terrestrial exposure model (T-REX; EPA, 2005) of potential residues of cold pressed neem oil following terrestrial treatments indicated that following 12 consecutive applications of 100% cold pressed neem oil at 7–day intervals, the maximum dietary residues present would be approximately 881 parts per million (ppm) on broadleaf plant foliage; and approximately 98 ppm on fruits, pods, and seeds (see table below). The modeling indicated that residues would decline rapidly between foliar applications (approximately 245–440 ppm on broadleaf foliage; and 27–49 ppm on fruits, pods, and seeds) and following the final application (see table below). As stated in Unit III.1. cold pressed neem oil is a Toxicity Category IV for oral exposure (LD_{50} = >5,000 mg/kg). The estimated maximum theoretical residues likely to be present on edible commodities are 882 ppm. This residue level is approximately 5-fold less than the highest doses used in acute and subchronic laboratory testing (5,000 mg/kg) and approximately 20-fold less than chronic laboratory testing (10% in the diet) at which no mortalities or other signs of clinical toxicity were observed.

Therefore, based on a lack of acute, subchronic, or chronic toxicity in laboratory testing, estimated maximum residues that are well below the doses used in laboratory testing, and the rapid degradation of neem oil in the environment, it is highly unlikely that that there will be any adverse effects to humans resulting from dietary exposure to neem oil.

ESTIMATED COLD PRESS NEEM OIL RESIDUES ON TERRESTRIAL MATRICES USING THE TERRESTRIAL EXPOSURE MODEL (T-REX; EPA, 2005)

Terrestrial Matrix	Dietary-based Estimated Environmental Concentrations		
	0 Days After Last App	86 Days After Last App	106 Days After Last App
Edible Broadleaf Plant Folage	881.20	0.04	0.00
Fruits. Pods, and Seeds	97.91	0.00	0.00

Moreover, humans are regularly exposed to this compound via consumption of cold pressed neem oil medicinal products, and at levels that are significantly greater than what would be expected from pesticide applications. The Agency is not concerned about dietary exposure because of the low toxicity of this active ingredient and the history of its use without any reports of adverse effects.

2. *Drinking water exposure*. No significant drinking water exposure or residues are expected to result from the pesticidal usage of cold pressed neem oil. The active ingredient is intended for use as a foliar application on food commodities and not to be applied directly to water or to areas where surface water is present. If used in accordance with EPA-approved labeling, is not likely to accumulate in drinking water. In the unlikely event that exposure via drinking water did occur from accidental spraying, the health risk would be expected to be minimal, based on the low acute oral toxicity and the long history of human exposure to cold pressed neem oil without adverse effects. As a result, dietary and drinking water exposure to residue of cold pressed neem oil are expected to be minimal.

B. Other Non-Occupational Exposure

There are no residential, school or day care uses proposed for this product. Since the proposed use pattern is for all food commodities, the potential for non-occupational, non-dietary exposures to cold pressed neem oil by the general population, including infants and children, is highly unlikely.

1. *Dermal exposure*. Humans are regularly exposed to cold pressed neem oil via dermal exposure when used on skin and hair at levels that are significantly greater than that which would be expected from the product use as a pesticide. Non-occupational dermal exposures to cold pressed neem oil when used as a pesticide are expected to be negligible because it is limited to agricultural use.

2. *Inhalation exposure*. Non-occupational inhalation exposures to cold pressed neem oil when used as a pesticide are expected to be negligible because it is limited to agricultural use.

V. Cumulative Effects

Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish an exemption from a tolerance, the Agency consider ''available information concerning the cumulative effects of a [particular pesticide's residues] and other substances that have a common mechanism of toxicity.'' These considerations include the possible cumulative effects of such residues on infants and children.

EPA has considered the potential for cumulative effects of cold pressed neem oil and other substances in relation to a common mechanism of toxicity. However, because of its low toxicity to mammalian systems, the Agency does not expect any cumulative or incremental effects from exposure to residues of cold pressed neem oil when applied/used as directed on the label and in accordance with good agricultural practices.

VI. Determination of Safety for U.S. Population, Infants and Children

There is reasonable certainty that no harm will result from aggregate exposure to residues of cold pressed neem oil to the U.S. population, infants, and children. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency arrived at this conclusion based on the low level of toxicity of cold pressed neem oil and the already widespread human use and exposure to cold pressed neem oil without any reported adverse effects on human health. The risks from aggregate exposure via oral, dermal and inhalation exposure are a compilation of three low-risk exposure scenarios and are negligible. Since there are no threshold effects of concern, the provision requiring an additional margin of safety does not apply. Moreover, cold pressed neem oil is widely used in cosmetics (soap, hair products, hand creams, etc.), traditional medicine (acne, fevers, rheumatism, diuretics, inflammations, etc.), as an insect repellent and an insecticide, as a nematicide and fungicide, and as a fertilizer. Humans have had frequent physical contact with cold pressed neem oil with no negative health effects. Therefore, the Agency has not used a MOE (safety) approach to assess the safety of cold pressed neem oil.

VII. Other Considerations

A. Endocrine Disruptors

EPA is required under section 408(p) of the FFDCA, as amended by the Food Quality Protection Act (FQPA), to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) ''may have an effect in humans that is similar to an effect produced by a naturally-occurring estrogen, or such other endocrine effect as the Administrator may designate.''

Cold pressed neem oil is not a known endocrine disruptor nor is it related to any class of known endocrine disruptors. Thus, there is no impact via endocrine-related effects on the Agency's safety finding set forth in this final rule for cold pressed neem oil.

B. Analytical Methods

Through this action, the Agency proposes to establish an exemption from the requirement of a tolerance for cold pressed neem oil when used on fruit and vegetable crops. For the same reasons that support the granting of this tolerance exemption, the Agency has concluded that an analytical method is not required for enforcement purposes for these proposed uses of cold pressed neem oil.

C. Codex Maximum Residue Level

There are no codex maximum residue levels established for cold pressed neem oil.

VIII. Conclusions

There are no human health concerns when end use products containing the active ingredient cold pressed neem oil are applied according to label use directions. The data submitted by the applicant and reviewed by the Agency support the petition for an exemption from the requirement of tolerances for cold pressed neem oil on food when the product is applied/used as directed on the label and in accordance with good agricultural practices. The toxicology data submitted are sufficient to demonstrate that no foreseeable human health hazard is likely to arise from the use of cold pressed neem oil.

IX. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

X. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller

General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 15, 2009.

Keith A. Matthews,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1291 is added to subpart D to read as follows:

§ 180.1291 Cold pressed neem oil; exemption from the requirement of a tolerance.

Residues of the biochemical pesticide cold pressed neem oil are exempt from the requirement of a tolerance in or on all food commodities.

[FR Doc. E9–25455 Filed 10–27–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0018; FRL–8795–3]

Pyriproxyfen; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of pyriproxyfen in or on artichoke, globe; asparagus; fruit, small, vine climbing subgroup, except grape 13–07E; vegetable, foliage of legume, group 7; vegetable, leafy, except brassica, group 4; vegetable, leaves of root and tuber, group 2; and watercress. It also removes the section 18 time-limited tolerances on succulent bean, celery and strawberry since these tolerances have expired. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective October 28, 2009. Objections and requests for hearings must be received on or before December 28, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0018. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; e-mail address: *madden.barbara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS Harmonized Test Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/oppts* and select ''Test Methods & Guidelines'' on the left side navigation menu.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0018 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before December 28, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2009–0018, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of April 8, 2009 (74 FR 15971) (FRL–8407–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E7492) by IR-4, IR-4 Project Headquarters, 500 College Rd. East, Suite 201 W., Princeton, NJ 08540. The petition requested that 40 CFR 180.510 be amended by establishing tolerances for residues of the insecticide pyriproxyfen in or on artichoke, globe at 2.0 parts per million (ppm); asparagus at 2.0 ppm; fruit, small, vine climbing subgroup, except grape 13–07E at 0.35 ppm; vegetable, foliage of legume, group 7 at 2.0 ppm; vegetable, leafy, except brassica, group 4 at 3.0 ppm; vegetable, leaves of root and tuber, group 2 at 2.0 ppm; and watercress at 2.0 ppm. That notice referenced a summary of the petition prepared by Valent U.S.A. Corporation, the registrant, on behalf of IR-4 which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of pyriproxyfen in or on vegetable, leaves of root and tuber, group 2 at 2.0 ppm; vegetable, leafy, except brassica, group 4 at 3.0 ppm; vegetable, foliage of legume, group 7 at 2.0 ppm; artichoke, globe at 2.0 ppm; asparagus at 2.0 ppm; watercress at 2.0 ppm; and small fruit vine climbing subgroup, except grape 13–07E at 0.35 ppm ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Pyriproxyfen is of low acute toxicity. Pyriproxyfen is not a dermal sensitizer. No significant systemic toxicity was observed in either the 21–day dermal toxicity study in rats or the 28–day inhalation toxicity study in rats. Subchronic and chronic toxicity studies in mice, rats and dogs indicate that the liver and kidney are the principal target organs with slight anemia occurring in the rodent species. There was no evidence of increased susceptibility to rat and rabbit fetuses in prenatal developmental toxicity studies or to rat offspring in the 2–generation rat reproduction study. No evidence of developmental toxicity was seen in special studies that evaluated pyriproxyfen toxicity following perinatal and prenatal exposure in rats. There was no evidence of carcinogenicity in either a 78–week mouse feeding study or in the 2–year rat chronic/carcinogenicity study. Pyriproxyfen is classified as a ''Group E'' chemical - no evidence of carcinogenicity to humans. Pyriproxyfen is negative for mutagenic activity in a battery of mutagenicity studies conducted with both the parent and/or metabolites. Specific information on the studies received and the nature of the adverse effects caused by pyriproxyfen as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2009–0018 on pages 34–36 of the document titled ''Pyriproxyfen. Human Health Risk Assessment for the Proposed Use of Pyriproxyfen in/on Vegetables, Leaves of Root and Tuber, Group 2; Vegetables, Leafy, Except Brassica, Group 4; Vegetable, Foliage of Legume, Group 7; Fruit, Small, Vine Climbing, Except Grape, Subgroup 13–07E; Artichoke, Globe; Asparagus; and Watercress Commodities.''

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-term, intermediate-term, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on

the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for pyriproxyfen used for human risk assessment can be found at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2009–0018 on pages 16–18 of the document titled ''Pyriproxyfen. Human Health Risk Assessment for the Proposed Use of Pyriproxyfen in/on Vegetables, Leaves of Root and Tuber, Group 2; Vegetables, Leafy, Except Brassica, Group 4; Vegetable, Foliage of Legume, Group 7; Fruit, Small, Vine Climbing, Except Grape, Subgroup 13–07E; Artichoke, Globe; Asparagus; and Watercress Commodities.''

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to pyriproxyfen, EPA considered exposure under the petitioned-for tolerances as well as all existing pyriproxyfen tolerances in 40 CFR 180.510. EPA assessed dietary exposures from pyriproxyfen in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No such effects were identified in the toxicological studies for pyriproxyfen; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Continuing Survey of Food Intake by Individuals (CSFII). As to residue levels in food, EPA performed an unrefined chronic analysis which assumed 100% crop treated (CT), default processing factors, and tolerance level residues for all commodities.

iii. *Cancer*. Based on the absence of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, EPA has classified pyriproxyfen as ''not likely to be carcinogenic to humans.'' Therefore, a quantitative exposure assessment to evaluate cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information*. As noted above in Unit III.C.1.ii., EPA did not use anticipated residue and/or PCT information in the dietary assessment for pyriproxyfen. Tolerance level residues and/or 100% CT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for pyriproxyfen in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of pyriproxyfen. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of pyriproxyfen for chronic exposures for non-cancer assessments are estimated to be 0.52 parts per billion (ppb) for surface water and 0.0022 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 0.52 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Pyriproxyfen is the active ingredient in many registered residential products for flea and tick control (home environment and pet treatments) as well as products for ant and roach control (indoor and outdoor applications). Formulations include carpet powders, foggers, aerosol sprays, liquids (shampoos, sprays and pipettes for pet treatments), granules, bait (indoor and outdoor), and impregnated materials (pet collars). Only a post-application residential assessment was conducted as the Agency did not select any short-term dermal or inhalation endpoints. Toddlers are anticipated to have the highest exposures from treated home environments and pets due to typical hand-to-mouth behavior. EPA assessed residential exposure using the following assumptions:

- Short-term, intermediate-term, and long-term toddler hand-to-mouth exposures (consisting of petting treated animals and touching treated carpets/flooring).
- Long-term dermal exposures for products with anticipated efficacy more than 6 months (carpet powders and pet collars).
- Combined treatment toddler exposure scenarios as a result of treatments to the home environment and the pet in the same period (such as carpet powder and pet shampoo treatments). Episodic ingestion of granules by toddlers is anticipated, but an assessment for this scenario is not included, since an acute dietary endpoint was not selected.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found pyriproxyfen to share a common mechanism of toxicity with any other substances, and pyriproxyfen does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that pyriproxyfen does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor (FQPA SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. Based on the available data, there is no quantitative and qualitative evidence of increased susceptibility observed following *in utero* pyriproxyfen exposure to rats and rabbits or following prenatal/postnatal exposure in the 2–generation reproduction study.

3. *Conclusion*. EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA SF to 1X. That decision is based on the following findings:

i. The toxicity database for pyriproxyfen is complete except for acute and subchronic neurotoxicity studies and immunotoxicity testing. Recent changes to 40 CFR part 158 make these studies (OPPTS Guideline 870.7800) required for pesticide registration; however, the available data for pyriproxyfen do not show potential for neurotoxicity or immunotoxicity. Although neurotoxicity studies have not yet been submitted, there is no evidence of neurotoxicity in any study in the toxicity database for pyriproxyfen. Similarly, although the database contains no specific immunotoxicity studies, no evidence of immunotoxicity was found in existing studies. EPA does not believe that conducting immunotoxicity testing will result in a NOAEL less than the chronic Referenced Dose (cRfD) NOAEL of 35.1 milligrams/kilogram body weight/day (mg/kg bw/day) already established for pyriproxyfen or that acute or subchronic neurotoxicity studies would affect selection of the acute Referenced Dose (aRfD) or cRfD. Accordingly, EPA concludes that an additional factor for database uncertainties is not needed to account for potential immunotoxicity or neurotoxicity.

ii. There is no indication that pyriproxyfen is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional uncertainty factors (UF) to account for neurotoxicity.

iii. There is no evidence that pyriproxyfen results in increased susceptibility *in utero* in rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% CT and tolerance-level residues. Conservative ground water and surface water modeling estimates were used. Similarly, conservative Residential Standard Operating Procedues (SOPs) were used to assess post-application exposure to children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by pyriproxyfen.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-term, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. No adverse effect resulting from a single-oral exposure was identified and no acute dietary endpoint was selected. Therefore, pyriproxyfen is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to pyriproxyfen from food and water will utilize 10% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. A long-term post-application residential assessment was performed. Toddlers are anticipated to have higher exposures than adults from treated home environments and pets due to their behavior patterns. The total chronic dietary and residential aggregate MOEs range from 580 to 4,500. For pyriproxifen, EPA would be concerned if the MOE was below 100.

3. *Short-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Pyriproxyfen is currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to pyriproxyfen.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures aggregated result in aggregate MOEs of 1,200 for children 1 to 2 years old, the population group receiving the greatest exposure, and therefore is not a concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Pyriproxyfen is currently registered for uses that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure to pyriproxyfen through food and water with intermediate-term exposures for pyriproxyfen.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures aggregated result in aggregate MOEs of 430 for children 1 to 2 years old, the population group receiving the greatest exposure, and therefore is not a concern.

5. *Aggregate cancer risk for U.S. population*. Pyriproxyfen is classified as a ''Group E'' chemical (negative for carcinogenicity in humans). This classification is based on the lack of evidence of carcinogenicity in mice and rats. EPA does not expect pyriproxyfen to pose a cancer risk.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to pyriproxyfen residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography/nitrogen-phosphorous detector; GC/NPD) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently no established Codex maximum residue limits for pyriproxyfen.

V. Conclusion

Therefore, tolerances are established for residues of pyriproxyfen in or on artichoke, globe at 2.0 ppm; asparagus at 2.0 ppm; fruit, small, vine climbing subgroup, except grape 13–07E at 0.35 ppm; vegetable, foliage of legume, group 7 at 2.0 ppm; vegetable, leafy, except brassica, group 4 at 3.0 ppm; vegetable, leaves of root and tuber, group 2 at 2.0 ppm; and watercress at 2.0 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 16, 2009.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.510 is amended by alphabetically adding the following commodities to the table in paragraph (a)(1) and by revising paragraph (b) to read as follows:

§ 180.510 Pyriproxyfen; tolerances for residues

(a) * * *(1) * * *

Commodity	Parts per million
* * * * *	
Artichoke, globe	2.0
Asparagus	2.0
* * * * *	
Fruit, small, vine climbing, except grape, subgroup 13–07E	0.35
* * * * *	
Vegetable, foliage of legume, group 7	2.0
* * * * *	
Vegetable, leafy, except Brassica, group 4	3.0
Vegetable, leaves of root and tuber, group 2	2.0
* * * * *	
Watercress	2.0
* * * * *	

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

[FR Doc. E9–25689 Filed 10–27–09; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[FWS–R9–MB–2009–0124]

[91200–1231–9BPP–L2]

RIN 1018–AW31

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2009–10 Late Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correcting amendments.

SUMMARY: On September 2 and 25, 2009, we, the U.S. Fish and Wildlife Service (Service), published two final rules that established special early- and late-season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. In error, the second of these rules omitted from the regulatory text pertaining to late-season hunting by the White Mountain Apache Tribe the dates and bag limits for duck and Canada goose. This document corrects those errors.

DATES: This rule takes effect on October 28, 2009.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service (703/358–1967), or Tina Chouinard, Division of Migratory Bird Management, U.S. Fish and Wildlife Service (731/432–0981).

SUPPLEMENTARY INFORMATION: On September 2 and 25, 2009, we published final rules that established special early- and late-season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust

lands, and ceded lands. These rules responded to tribal requests for Service recognition of tribal authority to regulate hunting under established guidelines. These rules allowed the establishment of season dates and bag limits and, thus, harvest at levels compatible with populations and habitat conditions. The early-season rule, which published September 2, 2009 (74 FR 45343), with an effective date of September 1, 2009, correctly included band-tailed pigeon and mourning dove season dates and bag limits in its regulatory text for paragraph (w) of 50 CFR 20.110, which applies to hunters on Fort Apache Indian Reservation lands in Whiteriver, Arizona. However, the late-season rule, which published and became effective on September 25, 2009 (74 FR 49292), did not properly revise paragraph (w) to include subsequently determined duck and Canada goose season dates and bag limits. This correction revises paragraph (w) to include duck and Canada goose season dates and bag limits for the White Mountain Apache Tribe. The substance of the regulations remains unchanged.

Administrative Procedure Act

We find good cause to waive notice and comment on this correction, pursuant to 5 U.S.C. 553(b)(3)(B), and the 30–day delay in effective date pursuant to 5 U.S.C. 553(d). Notice and comment are unnecessary because this rule merely corrects the regulations. The substance of the regulations remains unchanged. Therefore, this correction is being published as a final regulation and is effective as shown under **DATES**.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ Accordingly, part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703-712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a-j; Pub. L. 106-108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

(Note: The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature).

■ 2. Amend § 20.110 by revising paragraph (w) to read as follows:

§ 20.110 Seasons, limits, and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

* * * * *

(w) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters).

Band-tailed Pigeons (Wildlife Management Unit 10 and areas south of Y–70 and Y–10 in Wildlife Management Unit 7, only)

Season Dates: Open September 1 through September 15, 2009.

Daily Bag and Possession Limits: Three and six pigeons, respectively.

Mourning Doves (Wildlife Management Unit 10 and areas south of Y–70 and Y–10 in Wildlife Management Unit 7, only)

Season Dates: Open September 1 through September 15, 2009.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks

Scaup Season Dates: Open October 10, 2009, through December 6, 2009.

Season Dates: Open October 10, 2009, through January 24, 2010.

Daily Bag Limit: Seven ducks, including no more than two hen mallards, three scaup (when the season is open), two redheads, one canvasback, and two pintail.

Canada Geese

Season Dates: Open October 10, 2009, through January 24, 2010.

Daily Bag Limit: Three Canada geese per day.

General Conditions: All nontribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands must have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all nontribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Possession limits are twice the daily bag limits. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking.

* * * * *

Dated: October 21, 2009

Sara Prigan,

Federal Register Liaison.

[FR Doc. E9–25932 Filed 10–27–09; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 0809121213–9221–02]

RIN 0648–AY30

Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Inseason Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; inseason adjustments to biennial groundfish management measures; request for comments.

SUMMARY: This final rule announces inseason changes to management measures in the commercial Pacific Coast groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: Effective 0001 hours (local time) October 28, 2009 through December 31, 2009. Comments on this final rule must be received no later than 5 p.m., local time on November 27, 2009.

ADDRESSES: You may submit comments, identified by RIN 0648–AX96 by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- Fax: 206–526–6736, Attn: Gretchen Arentzen.
- Mail: Barry Thom, Acting Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Gretchen Arentzen.

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Gretchen Arentzen (Northwest Region, NMFS), phone: 206–526–6147, fax: 206–526–6736 and e-mail *gretchen.arentzen@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the **Federal Register**'s Website at *http://www.gpoaccess.gov/fr/index.html*. Background information and documents are available at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/*.

Background

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subpart G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS. A proposed rule to implement the 2009–2010 groundfish harvest specifications and management measures published on December 31, 2008, (73 FR 80516). The final rule to implement the 2009–2010 specifications and management measures for the Pacific Coast Groundfish Fishery was published on March 6, 2009 (74 FR 9874). This final rule was subsequently amended by inseason actions on April 27, 2009 (74 FR 19011) and July 6, 2009 (74 FR 31874). These specifications and management measures are codified in the CFR (50 CFR part 660, subpart G).

Changes to current groundfish management measures implemented by this action were recommended by the Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, at its September 12–17, 2009, meeting in Foster City, California. The Council recommended adjustments to current groundfish management measures to respond to updated fishery information and other inseason management needs. The projected impacts to three of the seven overfished species (canary and darkblotched rockfishes and Pacific ocean perch) will increase slightly with the adjustments to the cumulative limits in the limited entry non-whiting trawl fishery north of 40° 10.00' N. lat. and with the adjustments to the cumulative limits in the limited entry fixed gear and open access fisheries for deeper nearshore rockfish south of 40° 10.00' N. lat. These impacts, however, when combined with the impacts from all other fisheries, are not projected to exceed the 2009 rebuilding OYs for these species. The other adjustments to fishery management measures are not expected to result in greater impacts to overfished species than originally projected through the end of 2009. Estimated mortality of overfished and target species are the result of management measures designed to meet the Pacific Coast Groundfish FMP objective of achieving, to the extent possible, but not exceeding, OYs of target species, while fostering the rebuilding of overfished stocks by remaining within their rebuilding OYs.

Limited Entry Non-Whiting Trawl Fishery Management Measures

The most recently available fishery information indicates that catches of sablefish and arrowtooth flounder are lower than previously projected. Sablefish and arrowtooth flounder are both healthy target species that are caught coastwide. Based on the most recent fishery information (dated August 31, 2009), catch projections through the end of 2009 indicate that, absent regulatory changes, only 3,004 mt of the 3,280 mt sablefish allocation would be harvested and less than 50 percent of the 2009 arrowtooth flounder OY of 11,267 mt would be harvested. The Council considered options for changes to management measures to allow additional access to sablefish and to reduce discarding of arrowtooth flounder in the limited entry non-whiting trawl fishery.

The Council also made a final recommendation for reducing catches of petrale sole in November and December 2009 as interim management measures, as a result of a new, more pessimistic stock assessment. See the proposed rule at 74 FR 46714 (September 11, 2009). These measures, which will reduce cumulative limits for petrale sole and expand the RCA during period 6 (November-December), will be implemented in a separate rulemaking, after consideration of public comments received on the proposed rule. Reducing catches of petrale sole in 2009 is projected to reduce impacts to co-occurring overfished species (darkblotched rockfish and Pacific Ocean perch).

Reducing fishing opportunities for petrale sole is anticipated to reduce impacts to darkblotched rockfish, an overfished species that is part of the slope rockfish complex. With the reduced catch of petrale sole and absent any other action, only 92 mt of the 1160 mt slope rockfish complex northern OY was projected to be caught through the end of the year. In order to provide some additional fishing opportunities, given the severe restrictions being implemented for petrale sole in November-December, the Council considered increasing trip limits for the slope rockfish complex. Increases to slope rockfish trip limits were not considered for the area south of 38 N. lat. because the southern trip limit is much larger and vessels have not been attaining that limit under status quo conditions.

The modest increases to slope fishing activities, including slope rockfish trip limits, and sablefish and arrowtooth flounder trip limits, result in slightly higher projected impacts to Pacific Ocean perch (approximately 0.7 mt higher) and darkblotched rockfish (approximately 1.7 mt higher) than were projected for the limited entry non-whiting trawl fishery prior to inseason action. However, even with the slight increase in impacts for these overfished species, when combined with the projected impacts from all other fisheries, none of the 2009 OYs for these rebuilding species are projected to be exceeded.

Therefore, the Council recommended and NMFS is implementing the following increases to cumulative limits on October 28, 2009 through December 31, 2009.: increase sablefish cumulative limits, caught with large and small footrope trawl gears north of 40° 10' N. lat. and with all trawl gears south of 40° 10' N. lat., to ''27,000 lb (12,247 kg) per 2 months''; increase arrowtooth flounder cumulative trip limits, caught using large and small footrope gear North of 40° 10' N. lat., from ''150,000 lb (6,804 kg) per 2 months'' to ''180,000 lb (81,647 kg) per 2 months''; increase slope rockfish cumulative limits, caught with all trawl gears north of 40° 10' N. lat., from ''1,500 lb (680 kg) per 2 months'' to ''4,000 lb (1,814 kg) per 2 months''; and increase slope rockfish cumulative limits, caught with all trawl gears between 40° 10' N. lat. and 38 N. lat. from ''10,000 lb (4,536° kg) per 2 months'' to ''15,000 lb (6,804 kg) per 2 months'' in period 5 (September-October) and from ''15,000 lb (6,804 kg) per 2 months'' to ''18,000 lb (8,165 kg) per 2 months'' in period 6 (November-December).

Limited Entry Fixed Gear and Open Access Fishery Management Measures

Deeper Nearshore Trip Limits South of 40° 10.00' N. lat.

South of 40° 10' N. lat., the deeper nearshore trip limit is comprised of black rockfish, blue rockfish and deeper nearshore rockfish complex species. At their September meeting, the Council considered increasing the deeper nearshore trip limits to allow industry to land additional catch of these species and complexes because projected catches through the end of the year are much lower than their respective harvest guidelines (HGs). The Council considered how increases in this bi-monthly cumulative limit would affect the harvest level of the target species, as well as the potential for increased catch of co-occurring overfished species.

Black rockfish is a nearshore rockfish species that was assessed in 2007 as two separate stocks, and therefore the harvest specifications are divided at the Washington/Oregon border (46° 16.00' N. lat.). The 2009 black rockfish OY for the area south of 46° 16.00' N. lat. is 1,000 mt. The increase that the Council considered for deeper nearshore rockfish trip limits is not expected to exceed the 2009 black rockfish California harvest guideline of 420 mt.

The first blue rockfish stock assessment on the west coast was conducted in 2007 for the portion of the stock occurring in waters off California north of Pt. Conception (36° N. lat.). California manages blue rockfish as part of the minor nearshore rockfish complex, but with a species specific harvest guideline. Potential increases in blue rockfish landings as a result of increasing the deeper nearshore trip limits are not expected to exceed California's 2009 blue rockfish harvest guideline of 220 mt.

The trip limit increase that the Council considered for the deeper nearshore rockfish complex is not expected to cause the fishery to exceed the southern minor nearshore rockfish OY.

At their September meeting, the Council considered the most recent projected impacts to black rockfish, blue rockfish, and minor nearshore rockfish (both deeper and shallow nearshore) in the commercial non-trawl fisheries off the California coast through the rest of the year. The Council considered increases to the deeper nearshore rockfish trip limits south of 40° 10' N. lat. to allow additional harvest of these target stocks, and took into account the potential impacts to overfished species. The modest increases to deeper nearshore rockfish trip limits result in slightly higher projected impacts to canary rockfish than were projected for the southern non-trawl commercial fishery prior to inseason action. However, even with the slight increase in impacts for this overfished species, when combined with the projected impacts from all other fisheries, the 2009 OY for canary rockfish, a rebuilding species, is not projected to be exceeded.

Therefore, the Council recommended and NMFS is implementing trip limit changes for deeper nearshore rockfish in the limited entry fixed gear and open access fishery south of 40° 10.00' N. lat.: from either ''600 lb (272 kg) per 2 months'' or ''700 lb (318 kg) per 2 months'' to ''800 lb (36°3 kg) per 2 months'' beginning on October 28, 2009 through December 31, 2009..

Limited Entry Fixed Gear Sablefish Daily Trip Limit Fishery

Over the past several years, the amount of sablefish harvested in the limited entry fixed gear sablefish daily trip limit (DTL) fishery north of 36° N. lat. has been lower than their sablefish allocation. The Council recommended and NMFS implemented a precautionary adjustment that moderately raised the daily, weekly and bi-monthly trip limits for sablefish in this fishery on May 1, 2009 (74 FR 19011). At their June meeting the Council recommended and NMFS implemented a second precautionary adjustment that modestly increased the bi-monthly limit for July-October (July 6, 2009, 74 FR 31874). At their September 12–17, 2009 meeting the Council considered industry requests to further increase trip limits in this fishery. The best and most recently available fishery information indicates that, even with the May 1, 2009 and July 6, 2009 inseason adjustments, the entire sablefish allocation would not be harvested through the end of the year. To provide additional harvest opportunities for this healthy stock, the Council considered a modest increase to the weekly limit and two-month cumulative trip limit and eliminating the daily limit for sablefish in this fishery and the potential impacts on overall catch levels and overfished species. Trip limits in this fishery have been fairly stable over time; therefore some uncertainty surrounds how changes in trip limits will affect effort and landings. The Council also considered that the overall number of participants is restricted to vessels registered to a limited entry permit with the necessary gear endorsement. This increase in trip limits is not anticipated to increase projected impacts to overfished species, because projected impacts to overfished species are calculated assuming that the entire sablefish allocation is harvested. Increases in projected impacts to co-occurring target species are not anticipated to exceed OYs.

Therefore, the Council recommended and NMFS is implementing trip limit changes for the limited entry fixed gear fishery north of 36° N. lat. that increase sablefish DTL fishery limits from ''500 lb (227 kg) per day, or 1 landing per week of up to 1,500 lb (680 kg), not to exceed 6,000 lb (2,722 kg) per 2 months'' in period 5 (September-October) and from ''500 lb (227 kg) per day, or 1 landing per week of up to 1,500 lb (680 kg), not to exceed 5,500 lb (2,495 kg) per 2 months'' in period 6 (November-December) to ''2,000 lb (907 kg) per week, not to exceed 7,000 lb (3,175 kg) per 2 months'' beginning on October 28, 2009 through December 31, 2009.

Open Access Sablefish DTL Fishery

The most recent catch information from 2009 fisheries (August 31, 2009) indicates that catches of sablefish south of 36° N. lat. are lower than previously anticipated. Without any changes to current management measures, catches in this fishery through the end of the year are projected to be below the 2009 sablefish allocation. To provide additional harvest opportunities for this healthy stock, the Council considered increasing trip limits for sablefish in this fishery and the potential impacts on overall sablefish and overfished species catch levels. The Council considered modest increases to the weekly limit and elimination of the daily trip limit for sablefish in the limited entry fixed gear fishery south of 36° N. lat. in order to approach, but not exceed, the 2009 sablefish OY. Elimination of the daily limit south of 36° N. lat. was recommended for the same reasons as described above for the fishery north of 36° N. lat. Removal of the daily trip limit in the limited entry fishery south of 36° N. lat. is not anticipated to cause the fishery to exceed the 2009 sablefish allocation, for the area, of 351 mt. The daily limit was put in place when trip limits were the same for the limited entry fixed gear fishery and the open access fishery. The open access fishery relied on the daily limit to control effort. That same concern does not exist for a limited entry fishery. This modest increase in trip limits and removal of the daily limit is not anticipated to increase projected impacts to overfished species, because projected impacts to overfished species are calculated assuming that the entire sablefish

allocation is harvested. Increases in projected impacts to co-occurring target species are not anticipated to exceed OYs.

Therefore, the Council recommended and NMFS is implementing trip limit changes for the limited entry fixed gear fishery south of 36° N. lat. that increase sablefish DTL fishery limits from ''40°0 lb (181 kg) per day, or 1 landing per week of up to 1,500 lb (680 kg)'' to ''3,000 lb (1,36°1 kg) per week'' beginning on October 28, 2009 through December 31, 2009.

The most recent catch information from 2009 fisheries (August 31, 2009) indicates that catches of sablefish south of 36° N. lat. are lower than previously anticipated. Without any changes to current management measures, catches in this fishery through the end of the year are projected to be below the 2009 sablefish allocation. To provide additional harvest opportunities for this healthy stock, the Council considered increasing trip limits for sablefish in this fishery and the potential impacts on overall sablefish and overfished species catch levels. The Council considered increases to the weekly limit and eliminating the bi-monthly limits for sablefish in the open access fishery in order to approach, but not exceed, the 2009 sablefish OY. This increase in trip limits is not anticipated to increase projected impacts to overfished species, because projected impacts to overfished species are calculated assuming that the entire sablefish allocation is harvested.

Therefore, the Council recommended and NMFS is implementing an increase for the open access fishery trip limits south of 36° N. lat. that changes sablefish limits from ''40°0 lb (181 kg) per day, or 1 landing per week of up to 1,500 lb (680 kg), not to exceed 8,000 lb (3,629 kg) per 2 months'' to ''40°0 lb (181 kg) per day, or 1 landing per week of up to 2,500 lb (1,134 kg) beginning on October 28, 2009 through December 31, 2009.

Classification

These actions are taken under the authority of 50 CFR 660.370(c) and are exempt from review under Executive Order 12866.

These inseason adjustments are taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and are in accordance with 50 CFR part 660, the regulations implementing the FMP. These actions are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

For the following reasons, NMFS finds good cause to waive prior public notice and comment on the revisions to groundfish management measures under 5 U.S.C. 553(b) because notice and comment would be impracticable and contrary to the public interest. Also, for the same reasons, NMFS finds good cause to waive the 30–day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective quickly as possible in October.

The recently available data upon which these recommendations were based was provided to the Council, and the Council made its recommendations, at its September 12–17, 2009, meeting in Foster City, California. The Council recommended that these changes be implemented on or as close as possible to October 15, 2009. There was not sufficient time after that meeting to draft this document and undergo proposed and final rulemaking before these actions need to be in effect. For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent the Agency from managing fisheries using the best available science to approach without exceeding the OYs for federally managed species in accordance with the FMP and applicable laws. The adjustments to management measures in this document affect commercial fisheries off Washington, Oregon, and California. These adjustments to management measures must be implemented in a timely manner to allow fishermen an opportunity to harvest higher limits in 2009 for arrowtooth flounder, slope rockfish, sablefish, deeper nearshore rockfish, black rockfish, and blue rockfish in the last two fishing periods of the year (September-October and November-December).

Increases to cumulative limits for: sablefish in the limited entry trawl fishery, the limited entry fixed gear fishery, and the open access fishery; arrowtooth flounder and slope rockfish in the limited entry trawl fishery; and blue rockfish, black rockfish and deeper nearshore rockfish in the limited entry fixed gear fishery and the open access fishery allow fishermen increased opportunities to harvest available healthy stocks while staying within the OYs for these species. These changes must be implemented in a timely manner, as early as possible in October 2009, so that fishermen are allowed increased opportunities to harvest available healthy stocks at the end of the fishing year, and meet the objective of the Pacific Coast Groundfish FMP to allow fisheries to approach, but not exceed, OYs. It would be contrary to the public interest to wait to implement these changes until after public notice and comment, because making this regulatory change in October allows additional harvest in fisheries that are important to coastal communities.

Delaying these changes would keep management measures in place that are not based on the best available data, which could deny fishermen access to available harvest. Such delay would impair achievement of the Pacific Coast Groundfish FMP objective of approaching, but not exceeding, OYs.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian Fisheries.

Dated: October 22, 2009.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 is revised to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 USC 773 *et seq.*

■ 2. Tables 3 (North), 3 (South), 4 (North), 4 (South), and 5 (South) to part 660, subpart G are revised to read as follows:

BILLING CODE 3510–22–S

Table 3 (North) to Part 660, Subpart G -- 2009-2010 Trip Limits for Limited Entry Trawl Gear North of 40°10' N. Lat.
Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table

100709

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 48°10' N. lat.	shore - modified[7/] 200 fm line[6/]	shore - 200 fm line[6/]	shore - 150 fm line[6/]		shore - 200 fm line[6/]	shore - modified[7/] 200 fm line[6/]
2	48°10' N. lat. - 45°46' N. lat.	75 fm line[6/] - modified[7/] 200 fm line[6/]	75 fm line[6/] - 200 fm line[6/]	75 fm line[6/] - 150 fm line[6/]	100 fm line[6/] - 150 fm line[6/]	75 fm line[6/] - 200 fm line[6/]	75 fm line[6/] - modified[7/] 200 fm line[6/]
3	45°46' N. lat. - 40°10' N. lat.			75 fm line[6/] - 200 fm line[6/]	100 fm line[6/] - 200 fm line[6/]		
	Selective flatfish trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope and small footrope trawl gears (except for selective flatfish trawl gear) are prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season.						
	See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
4	**Minor slope rockfish[2/] & Darkblotched rockfish**	1,500 lb/ 2 months				4,000 lb/ 2 months	
5	**Pacific ocean perch**	1,500 lb/ 2 months					
6	**DTS complex**						
7	Sablefish						
8	large & small footrope gear	18,000 lb/ 2 months		22,000 lb/ 2 months	24,000 lb/ 2 months	27,000 lb/ 2 months	
9	selective flatfish trawl gear	5,000 lb/ 2 months	7,500 lb/ 2months		11,000 lb/ 2 months		
10	multiple bottom trawl gear[8/]	5,000 lb/ 2 months	7,500 lb/ 2months		11,000 lb/ 2 months		
11	Longspine thornyhead						
12	large & small footrope gear	22,000 lb/ 2 months					
13	selective flatfish trawl gear	3,000 lb/ 2 months	5,000 lb/ 2 months				3,000 lb/ 2 months
14	multiple bottom trawl gear[8/]	3,000 lb/ 2 months	5,000 lb/ 2 months				3,000 lb/ 2 months
15	Shortspine thornyhead						
16	large & small footrope gear	17,000 lb/2 months					
17	selective flatfish trawl gear	3,000 lb/ 2 months					
18	multiple bottom trawl gear[8/]	3,000 lb/ 2 months					
19	Dover sole						
20	large & small footrope gear	110,000 lb/ 2 months					
21	selective flatfish trawl gear	40,000 lb/ 2 months	45,000 lb/ 2 months				40,000 lb/ 2 months
22	multiple bottom trawl gear[8/]	40,000 lb/ 2 months	45,000 lb/ 2 months				40,000 lb/ 2 months

TABLE 3 (North)

Table 3 (North). Continued

23	**Whiting**					TABLE 3 (North) con't
24	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED.				
25	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.				
26	**Flatfish** (except Dover sole)					
27	Arrowtooth flounder					
28	large & small footrope gear	150,000 lb/ 2 months			180,000 lb/ 2 months	
29	selective flatfish trawl gear	90,000 lb/ 2 months				
30	multiple bottom trawl gear [8/]	90,000 lb/ 2 months				
31	Other flatfish [3/], English sole, starry flounder, & Petrale sole					
32	large & small footrope gear for Other flatfish [3/], English sole, & starry flounder	110,000 lb/ 2 months	110,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole.	110,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole.	110,000 lb/ 2 months, no more than 5,000 lb/ 2 months of which may be petrale sole.	110,000 lb/ 2 months
33	large & small footrope gear for Petrale sole	25,000 lb/ 2 months				40,000 lb/ 2 months
34	selective flatfish trawl gear for Other flatfish [3/], English sole, & starry flounder	90,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole.	90,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole.		90,000 lb/ 2 months, no more than 5,000 lb/ 2 months of which may be petrale sole.	90,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole.
35	selective flatfish trawl gear for Petrale sole					
36	multiple bottom trawl gear [8/]	90,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole.	90,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole.		90,000 lb/ 2 months, no more than 5,000 lb/ 2 months of which may be petrale sole.	90,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole.
37	**Minor shelf rockfish [1/], Shortbelly, Widow & Yelloweye rockfish**					
38	midwater trawl for Widow rockfish	Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting, combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.				
39	large & small footrope gear	300 lb/ 2 months				
40	selective flatfish trawl gear	300 lb/ month		1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish		300 lb/ month
41	multiple bottom trawl gear [8/]	300 lb/ month		300 lb/ 2 months, no more than 200 lb/ month of which may be yelloweye rockfish		300 lb/ month

Table 3 (North). Continued

42	**Canary rockfish**				
43	large & small footrope gear	CLOSED			
44	selective flatfish trawl gear	100 lb/ month	300 lb/ month	100 lb/ month	
45	multiple bottom trawl gear 8/	CLOSED			
46	**Yellowtail**				
47	midwater trawl	Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.			
48	large & small footrope gear	300 lb/ 2 months			
49	selective flatfish trawl gear	2,000 lb/ 2 months			
50	multiple bottom trawl gear 8/	300 lb/ 2 months			
51	**Minor nearshore rockfish & Black rockfish**				
52	large & small footrope gear	CLOSED			
53	selective flatfish trawl gear	300 lb/ month			
54	multiple bottom trawl gear 8/	CLOSED			
55	**Lingcod** 4/				
56	large & small footrope gear	1,200 lb/ 2 months	4,000 lb/ 2 months		
57	selective flatfish trawl gear		1,200 lb/2 months		
58	multiple bottom trawl gear 8/				
59	**Pacific cod**	30,000 lb/ 2 months	70,000 lb/ 2 months		30,000 lb/ 2 months
60	**Spiny dogfish**	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months	
61	**Other Fish** 5/	Not limited			

TABLE 3 (North) con't

1/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish.
2/ Splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.
5/ "Other fish" are defined at § 660.302 and include sharks, skates (including longnose skate), ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ The "modified" fathom lines are modified to exclude certain petrale sole areas from the RCA.
8/ If a vessel has both selective flatfish gear and large or small footrope gear on board during a cumulative limit period (either simultaneously or successively), the most restrictive cumulative limit for any gear on board during the cumulative limit period applies for the entire cumulative limit period.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart G -- 2009-2010 Trip Limits for Limited Entry Trawl Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table

100709

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	South of 40°10' N. lat.	100 fm line[6/] - 150 fm line[6/ 7/]					
	All trawl gear (large footrope, selective flatfish trawl, midwater trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear and midwater trawl gear are prohibited shoreward of the RCA.						
	See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
2	**Minor slope rockfish[2/] & Darkblotched rockfish**						
3	40°10' - 38° N. lat.	15,000 lb/ 2 months			10,000 lb/ 2 months	15,000 lb/ 2 months	18,000 lb/ 2 months
4	South of 38° N. lat.	55,000 lb/ 2 months					
5	**Splitnose**						
6	40°10' - 38° N. lat.	15,000 lb/ 2 months			10,000 lb/ 2 months		15,000 lb/ 2 months
7	South of 38° N. lat.	55,000 lb/ 2 months					
8	**DTS complex**						
9	Sablefish	20,000 lb/ 2 months				27,000 lb/ 2 months	
10	Longspine thornyhead	22,000 lb/ 2 months					
11	Shortspine thornyhead	17,000 lb/ 2 months					
12	Dover sole	110,000 lb/ 2 months					
13	**Flatfish** (except Dover sole)						
14	Other flatfish[3/], English sole, & starry flounder	110,000 lb/ 2 months	110,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole.			110,000 lb/ 2 months, no more than 5,000 lb/ 2 months of which may be petrale sole.	110,000 lb/ 2 months
15	Petrale sole	50,000 lb/ 2 months					50,000 lb/ 2 months
16	Arrowtooth flounder	10,000 lb/ 2 months					
17	**Whiting**						
18	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED.					
19	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					

TABLE 3 (South)

Table 3 (South). Continued

20	**Minor shelf rockfish[1/], Chilipepper, Shortbelly, Widow, & Yelloweye rockfish**				TABLE 3 (South) con't
21	large footrope or midwater trawl for Minor shelf rockfish & Shortbelly	300 lb/ month			
22	large footrope or midwater trawl for Chilipepper	5,000 lb/ 2 months	12,000 lb/ 2 months		
23	large footrope or midwater trawl for Widow & Yelloweye	CLOSED			
24	small footrope trawl for Minor Shelf, Shortbelly, Widow & Yelloweye	300 lb/ month			
25	small footrope trawl for Chilipepper	5,000 lb/ 2 months	12,000 lb/ 2 months		
26	**Bocaccio**				
27	large footrope or midwater trawl	300 lb/ 2 months			
28	small footrope trawl	CLOSED			
29	**Canary rockfish**				
30	large footrope or midwater trawl	CLOSED			
31	small footrope trawl	100 lb/ month	300 lb/ month	100 lb/ month	
32	**Cowcod**	CLOSED			
33	**Bronzespotted rockfish**	CLOSED			
34	**Minor nearshore rockfish & Black rockfish**				
35	large footrope or midwater trawl	CLOSED			
36	small footrope trawl	300 lb/ month			
37	**Lingcod[4/]**				
38	large footrope or midwater trawl	1,200 lb/ 2 months	4,000 lb/ 2 months		
39	small footrope trawl		1,200 lb/ 2 months		
40	**Pacific cod**	30,000 lb/ 2 months	70,000 lb/ 2 months	30,000 lb/ 2 months	
41	**Spiny dogfish**	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months	
42	**Other Fish[5/] & Cabezon**	Not limited			

1/ Yellowtail is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.
2/ POP is included in the trip limits for minor slope rockfish
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.
5/ Other fish are defined at § 660.302 and include sharks, skates (including longnose skate), ratfish, morids, grenadiers, and kelp greenling.
6/ The Rockfish Conservation Area is an area closed to fishing by particulary gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ South of 34°27' N. lat., the RCA is 100 fm line - 150 fm line along the mainland coast; shoreline - 150 fm line around islands.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (North) to Part 660, Subpart G -- 2009-2010 Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table 100709

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[6/]:							
1	North of 46°16' N. lat.	shoreline - 100 fm line[6/]					
2	46°16' N. lat. - 45°03.83' N. lat.	30 fm line[6/] - 100 fm line[6/]					
3	45°03.83' N. lat. - 43°00' N. lat.	30 fm line[6/] - 125 fm line[6/ 7/]					
4	43°00' N. lat. - 42°00' N. lat.	20 fm line[6/] - 100 fm line[6/]					
5	42°00' N. lat. - 40°10' N. lat.	20 fm depth contour - 100 fm line[6/]					
See § 660.370 and § 660.382 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.							
6	**Minor slope rockfish[2/] & Darkblotched rockfish**	4,000 lb/ 2 months					
7	**Pacific ocean perch**	1,800 lb/ 2 months					
8	**Sablefish**	300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months		500 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 5,500 lb/ 2 months	500 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 6,000 lb/ 2 months	2,000 lb per week, not to exceed 7,000 lb/ 2 months	
9	**Longspine thornyhead**	10,000 lb/ 2 months					
10	**Shortspine thornyhead**	2,000 lb/ 2 months					
11	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
12	**Arrowtooth flounder**						
13	**Petrale sole**						
14	**English sole**						
15	**Starry flounder**						
16	**Other flatfish[1/]**						
17	**Whiting**	10,000 lb/ trip					
18	**Minor shelf rockfish[2/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
19	**Canary rockfish**	CLOSED					
20	**Yelloweye rockfish**	CLOSED					
21	**Minor nearshore rockfish & Black rockfish**						
22	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/]					
23	42° - 40°10' N. lat.	6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/]			7,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish[3/]		
24	**Lingcod[4/]**	CLOSED		800 lb/ 2 months		400 lb/ month	CLOSED
25	**Pacific cod**	1,000 lb/ 2 months					
26	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
27	**Other fish[5/]**	Not limited					

TABLE 4 (North)

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
2/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.
5/ "Other fish" are defined at § 660.302 and include sharks, skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ The 125 fm line restriction is in place all year, except on days when the directed halibut fishery is open. On those days the 100 fm line restriction is in effect.

Table 4 (South) to Part 660, Subpart G -- 2009-2010 Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table 100709

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[5/]:							
1	40°10' - 34°27' N. lat.	30 fm line[5/] - 150 fm line[5/]					
2	South of 34°27' N. lat.	60 fm line[5/] - 150 fm line[5/] (also applies around islands)					
See § 660.370 and § 660.382 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.							
3	**Minor slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months					
4	**Splitnose**	40,000 lb/ 2 months					
5	**Sablefish**						
6	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months		500 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 5,500 lb/ 2 months	500 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 6,000 lb/ 2 months	2,000 lb per week, not to exceed 7,000 lb/ 2 months	
7	South of 36° N. lat.	400 lb/ day, or 1 landing per week of up to 1,500 lb				3,000 lb per week	
8	**Longspine thornyhead**	10,000 lb / 2 months					
9	**Shortspine thornyhead**						
10	40°10' - 34°27' N. lat.	2,000 lb/ 2 months					
11	South of 34°27' N. lat.	3,000 lb/ 2 months					
12	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
13	**Arrowtooth flounder**						
14	**Petrale sole**						
15	**English sole**						
16	**Starry flounder**						
17	**Other flatfish[1/]**						
18	**Whiting**	10,000 lb/ trip					
19	**Minor shelf rockfish[2/], Shortbelly, Widow rockfish, and Bocaccio (including Chilipepper between 40°10' - 34°27' N. lat.)**						
20	40°10' - 34°27' N. lat.	Minor shelf rockfish, shortbelly, widow rockfish, bocaccio & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb/ 2 months may be any species other than chilipepper.					
21	South of 34°27' N. lat.	3,000 lb/ 2 months	CLOSED	3,000 lb/ 2 months			
22	**Chilipepper rockfish**						
23	40°10' - 34°27' N. lat.	Chilipepper included under minor shelf rockfish, shortbelly, widow and bocaccio limits - - See above					
24	South of 34°27' N. lat.	2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA					
25	**Canary rockfish**	CLOSED					
26	**Yelloweye rockfish**	CLOSED					
27	**Cowcod**	CLOSED					
28	**Bronzespotted rockfish**	CLOSED					
29	**Bocaccio**						
30	40°10' - 34°27' N. lat.	Bocaccio included under Minor shelf rockfish, shortbelly, widow & chilipepper limits -- See above					
31	South of 34°27' N. lat.	300 lb/ 2 months	CLOSED	300 lb/ 2 months			

TABLE 4 (South)

Table 4 (South). Continued

32	**Minor nearshore rockfish & Black rockfish**							TABLE 4 (South)
33	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	600 lb/ 2 months	
34	Deeper nearshore							
35	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months		800 lb/ 2 months		
36	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months				
37	California scorpionfish	600 lb/ 2 months	CLOSED	600 lb/ 2 months	1,200 lb/ 2 months			
38	**Lingcod**[3/]	CLOSED		800 lb/ 2 months			400 lb/ month	CLOSED
39	**Pacific cod**	1,000 lb/ 2 months						
40	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months			
41	**Other fish**[4/] **& Cabezon**	Not limited						

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

2/ POP is included in the trip limits for minor slope rockfish. Yellowtail is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ The minimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

4/ "Other fish" are defined at § 660.302 and include sharks, skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling.

5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (South) to Part 660, Subpart G -- 2009-2010 Trip Limits for Open Access Gears South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table 100709

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
1	40°10' - 34°27' N. lat.	30 fm line[5/] - 150 fm line[5/]					
2	South of 34°27' N. lat.	60 fm line[5/] - 150 fm line[5/] (also applies around islands)					
	See § 660.370 and § 660.383 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[1/] & Darkblotched rockfish**						
4	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
5	South of 38° N. lat.	10,000 lb/ 2 months					
6	**Splitnose**	200 lb/ month					
7	**Sablefish**						
8	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months			300 lb/ day, or 1 landing per week of up to 950 lb, not to exceed 2,750 lb/ 2 months		
9	South of 36° N. lat.	400 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 8,000 lb/ 2 months				400 lb/ day, or 1 landing per week of up to 2,500 lb	
10	**Thornyheads**						
11	40°10' - 34°27' N. lat.	CLOSED					
12	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
13	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
14	**Arrowtooth flounder**						
15	**Petrale sole**						
16	**English sole**						
17	**Starry flounder**						
18	**Other flatfish[2/]**						
19	**Whiting**	300 lb/ month					
20	**Minor shelf rockfish[1/], Shortbelly, Widow & Chilipepper rockfish**						
21	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED		200 lb/ 2 months		300 lb/ 2 months
22	South of 34°27' N. lat.	750 lb/ 2 months			750 lb/ 2 months		
23	**Canary rockfish**	CLOSED					
24	**Yelloweye rockfish**	CLOSED					
25	**Cowcod**	CLOSED					
26	**Bronzespotted rockfish**	CLOSED					
27	**Bocaccio**						
28	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED		100 lb/ 2 months		200 lb/ 2 months
29	South of 34°27' N. lat.	100 lb/ 2 months			100 lb/ 2 months		

TABLE 5 (South)

Table 5 (South). Continued

30	**Minor nearshore rockfish & Black rockfish**						
31	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	600 lb/ 2 months
32	Deeper nearshore						
33	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months		800 lb/ 2 months	
34	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months			
35	California scorpionfish	600 lb/ 2 months	CLOSED	600 lb/ 2 months	1,200 lb/ 2 months		
36	**Lingcod**[3/]	CLOSED		400 lb/ month			CLOSE D
37	**Pacific cod**	1,000 lb/ 2 months					
38	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
39	**Other Fish**[4/] **& Cabezon**	Not limited					
40	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**						
41	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**						
42	40°10' - 38° N. lat.	100 fm - modified 200 fm[6/]	100 fm - 150 fm				100 fm - modified 200 fm[6/]
43	38° - 34°27' N. lat.	100 fm - 150 fm					
44	South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands					
45		Groundfish: 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).					
46	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*						
47	South	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 5 (South) con't

1/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish. POP is included in the trip limits for minor slope rockfish. Bronzespotted rockfish have a species specific trip limit.
2/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
3/ The size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.
4/ "Other fish" are defined at § 660.302 and include sharks, skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling.
5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
6/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

[FR Doc. E9–25984 Filed 10–27–09; 8:45 am]
BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 74, No. 207
Wednesday, October 28, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2009–0095]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security Office of Inspector General—002 Investigative Records System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is giving concurrent notice of an updated and reissued system of records pursuant to the Privacy Act of 1974 for the Department of Homeland Security Office of Inspector General—002 Investigative Records System of Records and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before November 27, 2009.

ADDRESSES: You may submit comments, identified by docket number DHS–2009–0095, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Doris A. Wojnarowski (202–254–4211), Department of Homeland Security, Office of Inspector General, Mail Stop 2600, 245 Murray Drive, SW., Building 410, Washington, DC 20528; or by facsimile (202) 254–4299. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, 245 Murray Drive, SW., Building 410, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background: Concurrently with the publication of this notice of proposed rulemaking, the Department of Homeland Security (DHS) is publishing a revised system of records notice that is subject to the Privacy Act of 1974, 5 U.S.C. 552a. The system is titled, DHS/Office of Inspector General (OIG)—002 Investigations Data Management System of Records (IDMS) (70 FR 58448–58451, October 6, 2005). DHS is now updating and revising the systems notice under a new name titled, DHS/OIG–002 Investigative Records System of Records, to cover the same records. DHS is proposing to continue to exempt this system, in part, from certain provisions of the Privacy Act.

The OIG is responsible for conducting and supervising independent and objective audits, inspections, and investigations of the programs and operations of DHS. The OIG promotes economy, efficiency, and effectiveness within the Department and prevents and detects fraud, waste, and abuse in its programs and operations. The OIG's Office of Investigations, investigates allegations of criminal, civil, and administrative misconduct involving DHS employees, contractors, grantees, and Departmental programs and activities. These investigations can result in criminal prosecutions, fines, civil monetary penalties, and administrative sanctions. Additionally, the Office of Investigations provides oversight and monitors the investigative activity of DHS' various internal affairs offices.

The DHS/OIG–002 Investigative Records System of Records assists the OIG with receiving and processing allegations of violation of criminal, civil, and administrative laws and regulations relating to DHS employees, contractors, grantees, and other individuals and entities associated with DHS. The system includes both paper investigative files and the Enforcement Data System (EDS), an electronic case management and tracking information system, which also generates reports. EDS allows the OIG to manage information provided during the course of its investigations, and, in the process, to facilitate its management of investigations and investigative resources.

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description of the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals in finding such files within the agency.

The Privacy Act allows government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemptions from certain requirements of the Privacy Act for the DHS/OIG–002 Investigative Records System of Records. Some information in the DHS/OIG–002 Investigative Records System of Records

relates to official DHS national security, immigration, intelligence, and law enforcement activities. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects of investigations and others related to these activities. Specifically, the exemptions are required to preclude subjects of investigations from frustrating the investigative process; to avoid disclosure of investigative techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DHS' ability to obtain information from third parties and other sources; to protect the privacy of third parties; and to safeguard classified information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

The exemptions proposed here are standard law enforcement and national security exemptions exercised by a large number of Federal law enforcement and intelligence agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A revised notice of a system of records for the Investigative Records System is also published in this issue of the **Federal Register**.

List of Subjects in 6 CFR Part 5

Freedom of information, Privacy.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.*; Public Law 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. Add at the end of Appendix C to Part 5, the following paragraph ''5'':

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

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5. The DHS/OIG–002 Investigative Records System of Records consists of electronic and paper records used by the DHS OIG. The DHS/OIG–002 Investigative Records System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to the enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; and national security and intelligence activities. The DHS/OIG–002 Investigative Records System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS components and may contain personally identifiable information collected by other Federal, state, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f); and (g) pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), and (e)(4)(H); and (f) pursuant to 5 U.S.C. 552a (k)(1), (k)(2) and (k)(5). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3)(Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation; and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, tamper with witnesses or evidence, and avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d)(Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, tamper with witnesses or evidence, and avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1)(Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2)(Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject as to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3)(Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by: revealing the existence of an otherwise confidential investigation and thereby providing an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; revealing the identity of witnesses in investigations thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or revealing the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G) and (H)(Agency Requirements) and (f)(Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish rules or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in this system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, potential witnesses, and confidential informants.

(g) From subsection (e)(5)(Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8)(Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g)(Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore, DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the

agency's refusals to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant, timely, and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: October 20, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–25944 Filed 10–27–09; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2009–0097]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/ALL–001 Freedom of Information Act and Privacy Act Records System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is giving concurrent notice of an updated and reissued system of records pursuant to the Privacy Act of 1974 for the Department of Homeland Security/ALL–001 Freedom of Information Act and Privacy Act Records System of Records and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before November 27, 2009.

ADDRESSES: You may submit comments, identified by docket number DHS–2009–0097, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer and Chief Freedom of Information Act Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer and Chief Freedom of Information Act Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background: The Department of Homeland Security (DHS) and its components and offices rely on the Privacy Act system of records notice, DHS/ALL–001 Freedom of Information Act and Privacy Act Records System of Records (69 FR 70460, December 6, 2004) for the collection and maintenance of records that concern the Department's Freedom of Information Act (FOIA) and Privacy Act (PA) records.

As part of its efforts to maintain its Privacy Act records systems, DHS is updating and reissuing a Department-wide system of records under the Privacy Act (5 U.S.C. 552a) for DHS FOIA and PA records. This will ensure that all components of DHS follow the same privacy rules for collecting and handling FOIA and PA records. The collection and maintenance of this information will assist DHS in managing the Department's FOIA and PA records.

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description of the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals in finding such files within the agency.

The Privacy Act allows Government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemptions from certain requirements of the Privacy Act for DHS/ALL–001 Freedom of Information Act and Privacy Act Records System of Records. Some information in DHS/ALL–001 Freedom of Information Act and Privacy Act Records System of Records relates to official DHS national security, law enforcement, immigration, intelligence activities, and protective services to the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18, investigatory records related to suitability and Federal service exams and test materials. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DHS's ability to obtain information from third parties and other sources; to protect the privacy of third parties; to safeguard classified information; and to safeguard records in connection with providing protective services to the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

The exemptions proposed here are standard law enforcement and national security exemptions exercised by a large number of Federal law enforcement and intelligence agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A notice of system of records for DHS/ALL–001 Freedom of Information Act and Privacy Act Records is also published in this issue of the **Federal Register**.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.*; Public Law 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. Add at the end of Appendix C to Part 5, the following new paragraph ''1'':

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

1. DHS/ALL–001 Freedom of Information Act and Privacy Act Records System of Records consists of electronic and paper records and will be used by DHS and its components. DHS/ALL–001 Freedom of Information Act and Privacy Act Records System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; national security and intelligence activities; and protection of the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18. DHS/ALL–001 Freedom of Information Act and Privacy Act Records System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. § 552a(c)(3) and (4): (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8); (f); and (g) pursuant to 5 U.S.C. § 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. § 552a(c)(3): (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) pursuant to 5 U.S.C. § 552a(k)(1), (k)(2), (k)(3), (k)(5), and (k)(6). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G) and (H) (I) and (f) (Agency Requirements) because portions of this system are exempt from the individual access provisions of subsection (d) and thus would not require DHS to apply rules for records or portions of records which are exempted from access or amendment upon request. Access to, and amendment of, system records that are not exempt or for which exemption is waived may be obtained under procedures described in the related system of records notice (SORN) or Subpart B of this Part.

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: October 20, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–25933 Filed 10–27–09; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0993; Directorate Identifier 2009–NM–089–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–2C, B4–103, and B4–203 Airplanes; and Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, and B4–622R Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

One A300–600 aeroplane operator reported that, during a routine inspection, the Right Hand frame 40 forward fitting between stringer 32 and stringer 33 was found cracked. The subject aeroplane had previously been modified in accordance with Airbus SB A300–57–6053 (Airbus Modification 10453).

This condition, if not corrected, could result in a deterioration of the structural integrity of the frame.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by December 14, 2009.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0993; Directorate Identifier 2009–NM–089–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued Airworthiness Directive 2009–0094, dated April 21, 2009 (Correction: May 29, 2009) (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> One A300–600 aeroplane operator reported that, during a routine inspection, the Right Hand frame 40 forward fitting between stringer 32 and stringer 33 was found cracked. The subject aeroplane had previously been modified in accordance with Airbus SB A300–57–6053 (Airbus Modification 10453).
>
> This condition, if not corrected, could result in a deterioration of the structural integrity of the frame.
>
> As no fatigue maintenance tasks (Inspection SB or Airworthiness Limitation Item) presently exist to inspect the affected area for aeroplanes having incorporated Airbus Modification 10453 preventively (without preliminary crack finding), Airbus has developed a new inspection [for cracking, and repair if necessary] to ensure structural integrity of the concerned area of frame 40.
>
> * * * * *

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued the following service information. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

- For Model A300 airplanes: Mandatory Service Bulletin A300–53A0387, including Appendices 01 and 02, dated September 12, 2008; and Service Bulletin A300–53–0268, Revision 06, dated January 7, 2002.
- For Model A300–600 airplanes: Mandatory Service Bulletin A300–57A6108, including Appendices 01 and 02, dated September 12, 2008; and Service Bulletin A300–57–6052, Revision 03, dated May 27, 2002, including Drawings 15R53810394, Issue A, dated December 21, 1998, and 21R57110247, Issue A, dated June 20, 1997.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 153 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $36,720, or $240 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII:

Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Airbus: Docket No. FAA–2009–0993; Directorate Identifier 2009–NM–089–AD.

Comments Due Date

(a) We must receive comments by December 14, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus airplanes, certificated in any category, as identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model A300 B4–2C, B4–103, and B4–203 airplanes, all serial numbers, modified preventively in service (without preliminary crack findings) in accordance with Airbus Service Bulletin A300–53–0297 (Airbus Modification 10453).

(2) Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes, all serial numbers, modified preventively in service (without preliminary crack findings) in accordance with Airbus Service Bulletin A300–57–6053 (Airbus Modification 10453).

Note 1: For airplanes on which Airbus Service Bulletin A300–53–0297 or A300–57–6053 (Airbus Modification 10453), as applicable, have been incorporated as a corrective action (repair following crack finding), no action is required by this AD.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

One A300–600 aeroplane operator reported that, during a routine inspection, the Right Hand frame 40 forward fitting between stringer 32 and stringer 33 was found cracked. The subject aeroplane had previously been modified in accordance with Airbus SB A300–57–6053 (Airbus Modification 10453).

This condition, if not corrected, could result in a deterioration of the structural integrity of the frame.

As no fatigue maintenance tasks (Inspection SB or Airworthiness Limitation Item) presently exist to inspect the affected area for aeroplanes having incorporated Airbus Modification 10453 preventively (without preliminary crack finding), Airbus has developed a new inspection [for cracking, and repair if necessary] to ensure structural integrity of the concerned area of frame 40.

* * * * *

Actions and Compliance

(f) Unless already done, do the following actions.

(1) At the applicable time specified in Table 1 of this AD: Do a one-time detailed visual inspection of the forward fitting at frame 40 on both sides of the airplane, in accordance with Airbus Mandatory Service Bulletin A300–57A6108 (for Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes) or A300–53A0387 (for Model A300 B4–2C, B4–103, and B4–203 airplanes), both including Appendices 01 and 02, both dated September 12, 2008.

TABLE 1—COMPLIANCE TIMES

Airplane models/configuration	Compliance time
A300 B4–2C and B4–103 airplanes on which Airbus Service Bulletin A300–53–0297 was done prior to the accumulation of 9,000 total flight cycles.	Prior to the accumulation of 18,000 total flight cycles, or within 3 months after the effective date of this AD, whichever occurs later.
A300 B4–2C and B4–103 airplanes on which Airbus Service Bulletin A300–53–0297 was done on or after the accumulation of 9,000 total flight cycles.	Within 5,500 flight cycles after accomplishment of Airbus Service Bulletin A300–53–0297, or within 6 months after the effective date of this AD, whichever occurs later; except, for airplanes that, as of the effective date of this AD, have accumulated 11,000 flight cycles or more since accomplishment of Airbus Service Bulletin A300–53–0297, within 3 months after the effective date of this AD.
A300 B4–203 airplanes on which Airbus Service Bulletin A300–53–0297 was done prior to the accumulation of 8,300 total flight cycles.	Prior to the accumulation of 15,000 total flight cycles, or within 3 months after the effective date of this AD, whichever occurs later.
A300 B4–203 airplanes on which Airbus Service Bulletin A300–53–0297 was done on or after the accumulation of 8,300 total flight cycles.	Within 4,100 flight cycles after accomplishment of Airbus Service Bulletin A300–53–0297, or within 6 months after the effective date of this AD, whichever occurs later; except, for airplanes that, as of the effective date of this AD, have accumulated 8,200 flight cycles or more since accomplishment of Airbus Service Bulletin A300–53–0297, within 3 months after the effective date of this AD.
A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes on which Airbus Service Bulletin A300–57–6053 was done prior to the accumulation of 6,100 total flight cycles.	Prior to the accumulation of 11,500 total flight cycles, or within 3 months after the effective date of this AD, whichever occurs later.

TABLE 1—COMPLIANCE TIMES—Continued

Airplane models/configuration	Compliance time
A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes on which Airbus Service Bulletin A300–57–6053 was done on or after the accumulation of 6,100 total flight cycles.	Within 3,300 flight cycles after accomplishment of Airbus Service Bulletin A300–57–6053, or within 6 months after the effective date of this AD, whichever occurs later; except, for airplanes that, as of the effective date of this AD, have accumulated 6,600 flight cycles or more since accomplishment of Airbus Service Bulletin A300–57–6053, within 3 months after the effective date of this AD.

(2) Except as required by paragraph (f)(3) of this AD: If any crack is found during the inspection required by paragraph (f)(1) of this AD, before further flight, do a temporary or definitive repair, as applicable, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–0268, Revision 06, dated January 7, 2002 (for Model A300 B4–2C, B4–103, and B4–203 airplanes); or A300–57–6052, Revision 03, dated May 27, 2002, including Drawings 15R53810394, Issue A, dated December 21, 1998, and 21R57110247, Issue A, dated June 20, 1997 (for Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes).

(3) If any crack found during the inspection required by paragraph (f)(1) of this AD cannot be repaired in accordance with Airbus Service Bulletin A300–53–0268, Revision 06, dated January 7, 2002; or A300–57–6052, Revision 03, dated May 27, 2002: Contact Airbus for repair instructions and before further flight repair the crack using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA.

(4) Submit an inspection report in accordance with Appendix 01 of Airbus Mandatory Service Bulletin A300–53A0387, dated September 12, 2008 (for Model A300 B4–2C, B4–103, and B4–203 airplanes); or Airbus Mandatory Service Bulletin A300–57A6108, dated September 12, 2008 (for Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes); to the address identified on the reporting sheet, at the applicable time specified in paragraph (f)(4)(i) or (f)(4)(ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: Although the MCAI or Airbus Service Bulletin A300–53–0268, Revision 06, dated January 7, 2002; or A300–57–6052, Revision 03, dated May 27, 2002; allows further flight after cracks are found during compliance with the required action, paragraph (f)(3) of this AD requires that you repair the cracks before further flight.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0094, dated April 21, 2009 (*Correction:* May 29, 2009); and the applicable service information specified in Table 2 of this AD for related information.

TABLE 2—RELATED SERVICE INFORMATION

Document	Revision	Date
Airbus Mandatory Service Bulletin A300–53A0387, including Appendices 01 and 02	Original	September 12, 2008.
Airbus Mandatory Service Bulletin A300–57A6108, including Appendices 01 and 02	Original	September 12, 2008.
Airbus Service Bulletin A300–53–0268	06	January 7, 2002.
Airbus Service Bulletin A300–57–6052, including Drawings 15R53810394, Issue A, dated December 21, 1998, and 21R57110247, Issue A, dated June 20, 1997.	03	May 27, 2002.

Issued in Renton, Washington, on October 19, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–25864 Filed 10–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0994; Directorate Identifier 2009–NM–108–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 900EX Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A quality control performed during completion of one Falcon 900EX aeroplane

has shown that the crew and passenger Right-Hand (RH) oxygen lines may both interfere with the frame 8 of the aeroplane structure. A subsequent design review of the oxygen lines routing has confirmed that, on certain aeroplanes, equipped in RH mid-cabin with a 115 cu-ft oxygen cylinder, the installation of the line support assembly at frame 8 needs to be accomplished with precaution; otherwise, the oxygen lines might interfere with the structure, and this condition could lead to an oxygen leak.

* * * * *

The unsafe condition is an oxygen leak, which would result in insufficient oxygen flow to passenger oxygen masks during a depressurization event. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by December 14, 2009.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0994; Directorate Identifier 2009–NM–108–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0126, dated June 18, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> A quality control performed during completion of one Falcon 900EX aeroplane has shown that the crew and passenger Right-Hand (RH) oxygen lines may both interfere with the frame 8 of the aeroplane structure. A subsequent design review of the oxygen lines routing has confirmed that, on certain aeroplanes, equipped in RH mid-cabin with a 115 cu-ft oxygen cylinder, the installation of the line support assembly at frame 8 needs to be accomplished with precaution; otherwise, the oxygen lines might interfere with the structure, and this condition could lead to an oxygen leak.
>
> As a result, [EASA] Airworthiness Directive 2009–0104 was issued to require inspection of the oxygen lines [for signs of interference or chafing damage], replacement of any damaged lines and modification of their support assembly. Since then, it has been found that the applicability of the AD had not been correctly defined.
>
> This [new EASA] AD retains the requirements of AD 2009–0104 which is superseded and corrects the applicability.

The unsafe condition is an oxygen leak, which would result in insufficient oxygen flow to passenger oxygen masks during a depressurization event. Modifying the support assembly of the oxygen lines includes drilling holes to install improved support bracket assemblies at frame 8, stringers 11 and 13, and installing the improved assemblies. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Dassault has issued Mandatory Service Bulletin F900EX–347, Revision 1, dated May 18, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a note within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 23 products of U.S. registry.

We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $7,360, or $320 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Dassault Aviation: Docket No. FAA–2009–0994; Directorate Identifier 2009–NM–108–AD.

Comments Due Date

(a) We must receive comments by December 14, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault Model Falcon 900EX airplanes, certificated in any category, with serial numbers 120 through 123 inclusive, 125 through 127 inclusive, 129, 132, 134 through 145 inclusive, 147, 151, 153, 155, 157 through 159 inclusive, 163, 165, 168 through 170 inclusive, 172, 174, 178, 182, 183, 194, 196, 197, 199, and 206.

Subject

(d) Air Transport Association (ATA) of America Code 35: Oxygen.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

A quality control performed during completion of one Falcon 900EX aeroplane has shown that the crew and passenger Right-Hand (RH) oxygen lines may both interfere with the frame 8 of the aeroplane structure. A subsequent design review of the oxygen lines routing has confirmed that, on certain aeroplanes, equipped in RH mid-cabin with a 115 cu-ft oxygen cylinder, the installation of the line support assembly at frame 8 needs to be accomplished with precaution; otherwise, the oxygen lines might interfere with the structure, and this condition could lead to an oxygen leak.

As a result, [European Aviation Safety Agency (EASA)] Airworthiness Directive 2009–0104 was issued to require inspection of the oxygen lines [for signs of interference and chafing damage], replacement of any damaged lines and modification of their support assembly. Since then, it has been found that the applicability of the AD had not been correctly defined.

This [EASA] AD retains the requirements of AD 2009–0104 which is superseded and corrects the applicability.

The unsafe condition is an oxygen leak, which would result in insufficient oxygen flow to passenger oxygen masks during a depressurization event. Modifying the support assembly of the oxygen lines includes drilling holes to install improved support bracket assemblies at frame 8, stringers 11 and 13, and installing the improved assemblies.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 2 months after the effective date of this AD, inspect the oxygen lines in accordance with Part 1 of the Accomplishment Instructions of Dassault Mandatory Service Bulletin F900EX–347, Revision 1, dated May 18, 2009. If any interference or damage is found, before further flight, replace the oxygen lines and install improved brackets, in accordance with Part 2 of the Accomplishment Instructions of Dassault Mandatory Service Bulletin F900EX–347, Revision 1, dated May 18, 2009.

(2) If no interference and no damage are found during the inspection required by paragraph (f)(1) of this AD: Within 72 months after the effective date of this AD, replace the oxygen line support assemblies, in accordance with Part 2 of the Accomplishment Instructions of Dassault Mandatory Service Bulletin F900EX–347, Revision 1, dated May 18, 2009.

(3) Actions accomplished before the effective date of this AD in accordance with Dassault Mandatory Service Bulletin F900EX–347, dated March 19, 2009, are acceptable for compliance with corresponding actions specified in this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from

a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2009–0126, dated June 18, 2009; and Dassault Mandatory Service Bulletin F900EX–347, Revision 1, dated May 18, 2009; for related information.

Issued in Renton, Washington, on October 19, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–25865 Filed 10–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0568; Directorate Identifier 2009–NE–20–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Arriel 2S1 Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: During acceleration up to One Engine Inoperative (OEI) 30-second rating, one event of flight loss of full automatic control occurred on an Arriel 2S1 engine. The selection of OEI 30-second rating on engine 1 was triggered by the automatic detection of an OEI situation further to a transient deceleration of engine 2. The transient deceleration of engine 2 was caused by the untimely reset of its DECU. Once this reset was completed, engine 2 resumed its nominal operation. Afterwards the aircraft then continued its flight safely with its engine 1 operating in manual control mode. The loss of full automatic control of engine 1 was caused by loss of steps of the stepper motor controlling the fuel metering valve inside the Hydromechanical Unit (HMU). It has been found that high accelerations, notably up to OEI 30-second rating, increase the risk of loss of steps of the HMU stepper motor. Therefore, this event has led to the consideration of the following unsafe condition at aircraft level: In-flight loss of full automatic control of the engine induced by the loss of steps of the stepper motor during acceleration up to OEI 30-second rating, further to an actual OEI situation on the other engine (such as a power loss event).

We are proposing this AD to prevent loss of full automatic control of the engine during acceleration up to the OEI 30-second rating. This condition could result in reduced controllability of the helicopter.

DATES: We must receive comments on this proposed AD by November 27, 2009.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov*; telephone (781) 238–7176; fax (781) 238–7199.

Contact Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 74 40 00, fax (33) 05 59 74 45 15 for the service information identified in this AD.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0568; Directorate Identifier 2009–NE–20–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0010, dated January 20, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During acceleration up to One Engine Inoperative (OEI) 30-second rating, one event of flight loss of full automatic control occurred on an Arriel 2S1 engine.
>
> The selection of OEI 30-second rating on engine 1 was triggered by the automatic detection of an OEI situation further to a transient deceleration of engine 2. The transient deceleration of engine 2 was caused by the untimely reset of its DECU. Once this reset was completed, engine 2 resumed its nominal operation. Afterwards the aircraft then continued its flight safely with its engine 1 operating in manual control mode.
>
> The loss of full automatic control of engine 1 was caused by loss of steps of the stepper

motor controlling the fuel metering valve inside the Hydromechanical Unit (HMU).

It has been found that high accelerations, notably up to OEI 30-second rating, increase the risk of loss of steps of the HMU stepper motor.

Therefore, this event has led to the consideration of the following unsafe condition at aircraft level: In-flight loss of full automatic control of the engine induced by the loss of steps of the stepper motor during acceleration up to OEI 30-second rating, further to an actual OEI situation on the other engine (such as a power loss event).

You may obtain further information by examining the MCAI in the AD docket.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of France and is approved for operation in the United States. Pursuant to our bilateral agreement with France, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require upgrading the DECU software to version 11.01, to implement modification of TU 109. Modification TU 109 increases the tolerance to loss of steps of the control system. It reduces significantly the risk of loss of full automatic control due to loss of steps of the stepper motor, notably during engine accelerations up to OEI 30-second rating.

Differences Between This AD and the MCAI or Service Information

The MCAI requires performing the DECU software upgrade no later than August 31, 2010. This proposed AD would require performing the DECU software upgrade within 350 operating hours after the effective date of the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 136 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $3,500 per product. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $508,640. Our cost estimate is exclusive of possible warranty coverage.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Turbomeca: Docket No. FAA–2009–0568; Directorate Identifier 2009–NE–20–AD.

Comments Due Date

(a) We must receive comments by November 27, 2009.

Affected Airworthiness Directives (ADs)

(b) None.

Applicability

(c) This AD applies to Turbomeca Arriel 2S1 turboshaft engines that have not incorporated Modification TU 109. These engines are installed on, but not limited to, Sikorsky S–76C+ twin-engine helicopters.

Reason

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. We are issuing this AD to prevent loss of full automatic control of the engine during acceleration up to the One Engine Inoperative 30-second rating. This condition could result in reduced controllability of the helicopter.

Actions and Compliance

(e) Unless already done, do the following actions:

(1) Within 350 operating hours after the effective date of this AD, perform an upgrade of the digital electronic control unit (DECU) software to version 11.01, to implement modification TU 109.

(2) Guidance on implementing TU 109 can be found in Turbomeca Mandatory Service Bulletin No. 292 73 2109, Version E, dated September 17, 2008.

Prohibition of Mixed DECU Software Versions on the Same Helicopter

(3) Do not operate an Arriel 2S1-powered twin-engine helicopter with one engine upgraded to modification TU 109 if the other engine is not upgraded to modification TU 109.

FAA AD Differences

(f) This AD differs from the Mandatory Continuing Airworthiness Information (MCAI) and/or service information as follows:

(1) The MCAI requires performing the DECU software upgrade no later than August 31, 2010.

(2) This proposed AD would require performing the DECU software upgrade within 350 operating hours after the effective date of the proposed AD.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2009–0010, dated January 20, 2009,

and Turbomeca Mandatory Service Bulletin No. 292 73 2109, Version E, dated September 17, 2008, for related information. Contact Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 74 40 00, fax (33) 05 59 74 45 15 for the service information identified in this AD.

(i) Contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov*; telephone (781) 238–7176; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on October 1, 2009.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9–25943 Filed 10–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0995; Directorate Identifier 2009–NM–123–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701) Airplanes, Model CL–600–2D15 (Regional Jet Series 705) Airplanes, and Model CL–600–2D24 (Regional Jet Series 900) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Investigation into a landing gear retraction problem on a production test flight revealed that, during aircraft pressurization and depressurization cycles, the pressure floor in the main landing gear bay deflects to a small extent. This causes relative misalignment between the [alternate-extension system] AES bypass valve, the downlock assist valve and the summing lever which, in turn, can result in damage to and potential failure of the respective clevis attached to one or both of the valves. Such a clevis failure could remain dormant and, in the subsequent event that use of the AES was required, full landing gear extension may not be achievable.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by December 14, 2009.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0995; Directorate Identifier 2009–NM–123–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2009–22, dated May 14, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Investigation into a landing gear retraction problem on a production test flight revealed that, during aircraft pressurization and depressurization cycles, the pressure floor in the main landing gear bay deflects to a small extent. This causes relative misalignment between the [alternate-extension system] AES bypass valve, the downlock assist valve and the summing lever which, in turn, can result in damage to and potential failure of the respective clevis attached to one or both of the valves. Such a clevis failure could remain dormant and, in the subsequent event that use of the AES was required, full landing gear extension may not be achievable.
>
> This directive gives instructions to replace the clevis, with a new part, for both the bypass and the downlock assist valves. It also gives instructions to install new support brackets for both valves, in order to increase the stiffness of the installations and thus prevent future relative misalignment and potential clevis failure.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Alert Service Bulletin A670BA–32–022, Revision A, including Appendix A, dated May 1, 2009. The actions described in this service information are intended to

correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 203 products of U.S. registry. We also estimate that it would take 12 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $939 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $385,497, or $1,899 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Bombardier Inc. (Formerly Canadair): Docket No. FAA–2009–0995; Directorate Identifier 2009–NM–123–AD.

Comments Due Date

(a) We must receive comments by December 14, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Bombardier airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Model CL–600–2C10 (Regional Jet Series 700 & 701) airplanes, serial numbers 10003 through 10216 inclusive.

(2) Model CL–600–2D15 (Regional Jet Series 705) and Model CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 through 15039 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Investigation into a landing gear retraction problem on a production test flight revealed that, during aircraft pressurization and depressurization cycles, the pressure floor in the main landing gear bay deflects to a small extent. This causes relative misalignment between the [alternate-extension system] AES bypass valve, the downlock assist valve and the summing lever which, in turn, can result in damage to and potential failure of the respective clevis attached to one or both of the valves. Such a clevis failure could remain dormant and, in the subsequent event that use of the AES was required, full landing gear extension may not be achievable.

This directive gives instructions to replace the clevis, with a new part, for both the bypass and the downlock assist valves. It also gives instructions to install new support brackets for both valves, in order to increase the stiffness of the installations and thus prevent future relative misalignment and potential clevis failure.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) For any bypass valve having part number (P/N) 53342–3, at the applicable time in paragraph (f)(1)(i), (f)(1)(ii), or (f)(1)(iii) of this AD, replace the existing clevis with a new clevis having P/N 2323H037, in accordance with Part A of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–022, Revision A, dated May 1, 2009. The replacement is not required if paragraph (f)(3) of this AD has already been done.

(i) If the bypass valve has accumulated 9,400 total flight cycles or fewer as of the effective date of this AD, replace the clevis before the accumulation of 10,000 total flight cycles on the valve.

(ii) If the bypass valve has accumulated more than 9,400 total flight cycles as of the effective date of this AD, replace the clevis within 550 flight hours after the effective date of this AD.

(iii) If it is not possible to determine the total flight cycles accumulated on the bypass

valve, replace the clevis within 550 flight hours after the effective date of this AD.

(2) For any downlock assist valve having (P/N) 53341–5, at the applicable time in paragraph (f)(2)(i), (f)(2)(ii), or (f)(2)(iii) of this AD, replace the existing clevis with a new clevis, having P/N 2323H037, in accordance with Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–022, Revision A, dated May 1, 2009. The replacement is not required if paragraph (f)(3) of this AD has already been done.

(i) If the valve has accumulated 9,400 total flight cycles or fewer as of the effective date of this AD, replace the clevis before the valve has accumulated 10,000 total flight cycles on the valve.

(ii) If the valve has accumulated more than 9,400 total flight cycles as of the effective date of this AD, replace the clevis within 550 flight hours after the effective date of this AD.

(iii) If it is not possible to determine the total flight cycles accumulated by the downlock assist valve, replace the clevis within 550 flight hours after the effective date of this AD.

(3) At the earliest of the times in (f)(3)(i), (f)(3)(ii), and (f)(3)(iii) of this AD, install new support brackets for the bypass valve and downlock assist valve, in accordance with Part C of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–022, Revision A, dated May 1, 2009. Installing the support brackets terminates the requirements of paragraphs (f)(1) and (f)(2) of this AD.

(i) Within 4,500 flight hours after the effective date of this AD.

(ii) Within 6,000 flight cycles after accomplishing the actions specified in paragraph (f)(1) of this AD or within 600 flight cycles after the effective date of this AD, whichever occurs later.

(iii) Within 6,000 flight cycles after accomplishing the actions specified in paragraph (f)(2) of this AD or within 600 flight cycles after the effective date of this AD, whichever occurs later.

(4) Replacing the clevises for the bypass valve and downlock assist valve before the effective date of this AD, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–022, dated November 8, 2007, is considered acceptable for compliance with the corresponding actions in paragraphs (f)(1) and (f)(2) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2009–22, dated May 14, 2009; and Bombardier Alert Service Bulletin A670BA–32–022, Revision A, dated May 1, 2009; for related information.

Issued in Renton, Washington, on October 19, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–25866 Filed 10–27–09; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1422

RIN 3041–AC78

Standard for Recreational Off-Highway Vehicles

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission (''Commission'') is considering whether there may be unreasonable risks of injury and death associated with Recreational Off-Highway Vehicles (ROVs). This advance notice of proposed rulemaking (ANPR) begins a rulemaking proceeding under the Consumer Product Safety Act (CPSA).[1]

[1] The Commission voted 4–0 to publish this ANPR in the **Federal Register**. Chairman Inez M. Tenenbaum and Commissioners Robert Adler, Thomas Moore, and Nancy Nord voted to publish the ANPR. Commissioner Anne Northup abstained from voting. Chairman Tenenbaum issued a statement, which can be found at *http://www.cpsc.gov/pr/tenenbaum10212009.pdf*.

DATES: Written comments in response to this document must be received by the Commission no later than December 28, 2009.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2009–0087, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way: Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *http://www.regulations.gov*.

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper (preferably in five copies), disk, or CD–ROM submissions), to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov*. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background comments or comments received, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Caroleene Paul, Project Manager, Recreational Off-Highway Vehicle Team, Directorate for Engineering Sciences, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7540 or e-mail: *cpaul@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

In general, ROVs are motorized vehicles having four or more low pressure tires designed for off-road use and intended by the manufacturer primarily for recreational use by one or

more persons. ROVs are a relatively new product in the motorized off-road vehicle category, and, as explained in more detail in part B of this preamble below, their speed and design make them distinct from other vehicles such as all-terrain vehicles (ATVs), light utility vehicles, and golf carts. The number of manufacturers and importers marketing ROVs in the United States has increased substantially in recent years. The first utility vehicle that exceeded 30 mph, thus putting it in the ROV category, was introduced in the late 1990s. No other manufacturer offered a ROV until 2003. Since 2003, more than a dozen manufacturers and importers have entered the market, mostly in only the last couple of years.

The Commission has received more than 180 reports of ROV-related injury and fatality incidents occurring between January 2003 and August 2009. Additionally, non-fatal injuries involving ROVs are significant in nature, often resulting in amputation, degloving,[2] or other severe injury of extremities that can cause permanent disfigurement. Although a voluntary standard for ROVs has been proposed (as discussed in part D.3 of this preamble), the Commission does not believe the proposed voluntary standard as currently drafted adequately addresses the risk of injury associated with ROVs. The Commission is considering whether there may be unreasonable deaths and injuries associated with ROVs such that rulemaking is necessary.

B. The Product

ROVs are motorized vehicles having four or more low pressure tires designed for off-road use and intended by the manufacturer primarily for recreational use by one or more persons. Other salient characteristics of an ROV include: A steering wheel for steering control, foot controls for throttle and braking, bench or bucket seats, rollover protective structure (ROPS), restraint system, and a maximum speed greater than 30 miles per hour (mph).

Although similar in configuration to some light utility vehicles and golf carts, ROVs differ from these vehicle classes by their ability to reach speeds greater than 30 mph. In addition, ROVs are more likely than utility vehicles to be used recreationally in an off-road environment. Light utility vehicles are used primarily in farm and work applications and have maximum speeds of 25 mph or less. Similarly, golf carts are intended for low speed applications (15 mph or less) on moderate terrain.

ROVs are intended to be used on similar terrain to that on which all-terrain vehicles (ATVs) are used, but are distinguished from ATVs by having a steering wheel instead of a handle bar, bench or bucket seats for the driver and passenger(s) instead of straddle seating, foot controls for throttle and braking instead of levers located on the handle bar, and ROPS and restraint systems that are not present on ATVs.

Retail Prices: The suggested retail prices for ROVs are generally higher than those for other types of recreational and utility vehicles. The prices of the ROVs offered by the five major manufacturers range from about $8,000 to $14,000, depending upon factors such as engine size and other features. The retail prices of most of the models offered by the smaller importers and distributors range from about $6,000 to $8,000.

There also is an active secondary market for ROVs. For models produced by the major manufacturers, prices for used ROVs range from as low as $2,000 to $3,000 for models produced in the early 2000's, to $5,000 to $8,000 for those produced in 2006 or 2007.[3]

Sales and Numbers in Use: ROV sales have seen significant growth in a short time period. In 1998, only one manufacturer offered ROV models and fewer than 2,000 units were sold.[4] By 2003, when a second major manufacturer entered the market, almost 20,000 ROVs were sold. In 2008, it is estimated that more than 126,000 ROVs were sold by more than a dozen different manufacturers or distributors.[5]

The CPSC's Product Population Model is a computer model that projects the number of products in use given information on product sales and the expected rate at which products fail or go out of use.[6] The estimated approximate number of ROVs in use is a measure of risk exposure. Based on sales through 2008, and assuming an average product life of about 10 years, there may have been more than 416,000 ROVs in use at the end of 2008. This contrasts with fewer than 45,000 ROVs in use at the end of 2003.

C. The Risk of Injury

The Commission has received reports of 181 ROV-related fatality and injury incidents occurring between January 2003 and August 2009. Many reports were submitted to the CPSC by consumers, medical examiners, and police departments. In addition, the Commission obtained reports of ROV-related injury and fatality incidents through review of newspaper articles and other news sources, including online news reports. These incidents do not constitute a statistically derived sample of ROV-related incidents.

Because of the number and severity of the incidents, CPSC's Division of Hazard Analysis undertook a more thorough review of these incidents. From the 181 ROV-related incidents, the Commission is aware of 116 ROV-related fatalities and 152 ROV-related injuries. More than 30 percent of the 181 incidents were reported to involve more than one victim (either deceased or injured). In considering these counts, it is important to emphasize that data collection is ongoing, and these counts are expected to increase as CPSC staff obtains additional information regarding ROV-related incidents. In addition, the Commission is expecting to receive additional information regarding some of the 181 incidents reviewed. This information, together with reports of additional ROV-related incidents, may result in changes to some of the information.

Of the 152 injuries that were reported to have occurred as a result of ROV-related incidents, a number were very serious in nature. These injuries include deglovings, fractures, and crushing injuries involving the victims' legs, feet, arms and hands. In some cases, surgical amputation of the victims' injured limbs was required after the incident.

Of the 181 reported incidents, 125 (69 percent) of the incidents appeared to have involved overturning of the ROV, with no known collision event preceding the overturning. Additionally, 20 (11 percent) of the incidents were reported to have involved collision of the vehicle with either a stationary object or another motor vehicle.

Vehicle Overturning: Of the 125 incidents that involved overturning of the ROV, the CPCS staff was able to determine in 107 incidents whether or not a victim was ejected from the vehicle. Ninety-eight percent (105 of 107) of these incidents appeared to involve at least one victim who exited the vehicle, either partially or completely. Deceased or injured victims

[2] A degloving is a type of injury in which a large section of skin and tissue is torn away, sometimes to the bone.

[3] National Automobile Dealers Association, *Motorcycle/Snowmobile/ATV/Personal Watercraft Appraisal Guide,* September–December 2009.

[4] Based upon analysis of sales data compiled by Power Products Marketing, Eden Prairie, MN.

[5] *Id.*

[6] For a more complete description of the Product Population Model, see M.L. Lahr and B.B. Gordon, *Final Report on Product Life Model Feasibility and Development Study to Deputy Associate Executive Director for Economic Analysis, U.S. Consumer Product Safety Commission,* prepared by Battelle Columbus Laboratories, Columbus, Ohio (14 July 1980).

were ejected by being thrown out, falling out, jumping out, climbing out, or otherwise fully or partially exiting the vehicle. Partial ejections include victims' limbs (*i.e.,* arms and legs) coming out of the vehicle and being crushed by some part of the vehicle.

Of the 125 incidents that involved overturning of the ROV, the CPSC staff was able to determine in 72 incidents whether or not the victim was wearing a seat belt. Seventy-one percent (51 of 72) of these incidents appeared to involve at least one victim who was either not using the seat belt or was wearing it improperly. (Improper seat belt use includes situations where the victim did not use the shoulder portion of the three-point restraint system on the ROV.)

Of the 125 incidents that involved overturning of the ROV, CPSC staff was able to determine in 71 incidents whether or not a victim was wearing a helmet. Ninety-six percent (68 of 71) of these incidents appeared to involve at least one victim who was either not wearing a helmet or who was wearing a helmet improperly.

Vehicle Collision: Of the 20 incidents that involved collision of the ROV, CPSC staff was able to determine in 14 incidents whether or not a victim was ejected from the vehicle. Seventy-nine percent (11 of 14) of these incidents appeared to involve at least one victim who exited the vehicle, either partially or completely. Deceased or injured victims were ejected by being thrown out, falling out, or otherwise completely or partially exiting the vehicle. Partial ejections include victims' limbs (*i.e.,* arms and legs) coming out of the vehicle and being crushed by the vehicle. In some incidents, collision of the ROV was then followed by the overturning of the ROV. These incidents were categorized as ''ROV collision'' rather than as ''Overturning.''

Of the 20 incidents that involved collision of the ROV, CPSC staff was able to determine in 12 incidents whether or not the victim was wearing a seat belt. Seventy-five percent (9 of 12) of the incidents appeared to involve at least one victim who was either not using the seat belt or who was wearing it improperly.

Of the 20 incidents that involved collision of the ROV, CPSC staff was able to determine in 15 incidents whether or not a victim was wearing a helmet. Eighty-seven percent (13 of 15) of these incidents appeared to involve at least one victim who was either not wearing a helmet or who was wearing a helmet improperly.

Societal Costs of Injuries: The societal costs of injuries include the medical cost of treating the injury, the cost of lost work due to the injury, intangible costs (such as pain and suffering), and the product insurance and litigation costs. The injury costs will vary by factors such as the severity of the injury (an injury resulting in a hospital stay is more costly than one that does not) and the body part affected (a head injury is usually more costly than an injury to a finger). Usually, the intangible cost (pain and suffering) is the largest component of the societal cost of injuries.

Assuming the non-fatal injuries associated with ROVs are similar to those associated with ATVs in terms of the severity and type of injury, then the average societal cost of an injury would be about $38,000. Pain and suffering would account for about 67 percent of the cost, medical costs would account for almost 13% of the cost, and work loss would account for about almost 20% of the cost. The legal and liability costs would account for less than one percent of the total. (These estimates are based on the average cost of an injury associated with an ATV calculated using the CPSC's Injury Cost Model (ICM).)

D. Current Safety Efforts

1. *Testing:* From November 2008 to January 2009, the Commission staff tested and evaluated several ROV models on the market. The staff's preliminary evaluations indicate that the vehicles may exhibit inadequate lateral stability, undesirable steering characteristics, and inadequate occupant protection during a roll over crash. CPSC staff believes improved lateral stability and vehicle handling can reduce some of the rollover related incidents. In addition, CPSC staff believes improved occupant retention and protection (including improved occupant use of seat belts) can reduce some of the occupant ejections associated with ROV rollover and collision. CPSC staff identified three factors related to the design of a ROV that have the greatest impact on occupant safety: (1) Static stability factor (SSF); (2) vehicle handling; and (3) occupant retention and protection.

a. *SSF:* The SSF of a vehicle is the ratio of the vehicle's track width to twice the height of its center of gravity.[7] The National Highway Traffic Safety Administration (NHTSA) has established a strong correlation between a vehicle's SSF and the risk of rollover in a single vehicle crash. The risk of rollover for automobiles in a single-vehicle crash ranges from over 40% to less than 10% with a vehicle SSF range from 1.03 to 1.45.[8] NHTSA's rollover ratings reflect the real-world rollover experience of vehicles involved in over 86,000 single-vehicle crashes.[9] The higher the SSF value the more stable the vehicle, and the less likely the vehicle is to rollover. The SSF values for the ROV models (with 2 occupants) tested by CPSC staff ranged from 0.84 to 0.92, which is far lower than the range for automobiles. CPSC staff believes that a SSF range of 0.84 to 0.92 is inadequate for a vehicle that is specifically designed to traverse conditions, such as uneven terrain and slopes, that present an even greater rollover hazard to vehicles than level, on-road conditions.

b. *Vehicle Handling:* Passenger cars are deliberately designed to understeer. If a vehicle understeers in a turn, the front wheels lose traction and the steering wheel needs to be turned more to stay on the path of the turn. This condition is directionally stable and predictable. If a vehicle oversteers in a turn, by contrast, the rear wheels lose traction and the steering wheel needs to be turned less to stay on the turn. This condition is directionally unstable because it can result in spin out or rollover of the vehicle. Controlling oversteer requires driver skill and knowledge in using acceleration and steering that is beyond the average driver.

The CPSC testing of sample ROVs to SAE J266, *Steady-State Directional Control Test Procedures for Passenger Cars and Light Trucks,* a standard vehicle handling test, indicates that some model ROVs exhibit severe oversteer while other model ROVs exhibit understeer. The CPSC staff believes that ROVs should exhibit understeer characteristics that are similar to automobiles because such characteristics are safer and more familiar to drivers.

c. *Occupant Retention and Protection:* CPSC staff's testing of the sample ROVs to static and dynamic rollover simulations indicate that occupants may be better restrained in some model ROVs. Specifically, occupants may be better restrained in ROVs where the occupant seating location is significantly lower within the vehicle and the vehicle provides a physical shoulder guard on both the passenger and driver side that helps keep the occupant's upper torso within the vehicle.

[7] SSF = T/2H, where T = vehicle track width and H = vertical distance from ground to vehicle's center of gravity.

[8] *http://www.safercar.gov.*

[9] *Id.*

2. *Repair Program:* In March 2009, the Commission negotiated a repair program involving the Yamaha Rhino 450, 660, and 700 model ROVs to address stability and handling issues with the vehicles.[10] CPSC staff investigated more than 50 incidents, including 46 driver and passenger deaths. The manufacturer voluntarily agreed to design changes through a retrofit program that would increase the vehicle's SSF and change the vehicle's handling characteristic from oversteer to understeer. The repair consisted of: (1) The addition of rear spacers on the vehicle's rear wheels and the removal of the rear anti-sway bar to increase vehicle stability and improve handling; and (2) continued installation of half doors and passenger hand holds to help keep occupants' arms and legs inside the vehicle during a rollover.

3. *Voluntary Standard:* CPSC staff met with representatives of the Recreational Off-Highway Vehicle Association (ROHVA) on December 12, 2008, to discuss the development of an American National Standards Institute (ANSI) standard for ROVs. ROHVA was formed by four manufacturers, and one of its stated purposes is to develop a voluntary standard for ROVs. The ROHVA representatives presented an outline for a voluntary standard that included requirements for vehicle configuration, service and parking brake performance, and lateral and pitch stability. At this meeting, CPSC staff expressed concerns about the lateral stability and occupant protection aspects of the ROV class of vehicles. In particular, CPSC staff expressed concern regarding a proposed requirement for a 20 degree tilt angle for a fully loaded vehicle. CPSC staff suggested that ROHVA consider NHTSA's use of a vehicle's SSF to describe lateral stability and discussed the possibility of using an SSF greater than 1.0 as a minimum lateral stability requirement for ROVs. The ROHVA representatives rejected using SSF. In addition, CPSC staff encouraged ROHVA to develop requirements dedicated to ensuring adequate occupant protection.

On June 12, 2009, CPSC staff received a copy of the draft proposed American National Standard for Recreational Off-Highway Vehicles, ANSI/ROHVA 1–200X. The draft voluntary standard addresses design, configuration and performance aspects of ROVs, including requirements for accelerator, clutch, and gearshift controls; engine and fuel cutoff devices; lighting; tires; service and parking brake performance; lateral and pitch stability; occupant handholds and rollover protection structure (ROPS); seat belts; and requirements for labels and owner's manuals.

CPSC staff reviewed the draft standard and found no improvement from the proposals made by ROHVA at the December 2008 meeting in the areas of lateral stability and occupant protection. ROHVA continues to propose low tilt angles as a lateral stability requirement, continues to define stability coefficients for an unoccupied vehicle (an unrealistic use configuration), fails to address vehicle handling, and fails to address occupants coming out of a vehicle during a rollover event. This notice, in parts D.3.a through D.3.c of this preamble immediately below, discusses the CPSC staff's concerns on specific aspects of the draft standard.

a. *Vehicle Stability:* Section 8 of the draft voluntary standard, *Lateral Stability,* requires the following: That all ROVs, in a fully loaded configuration with occupants and cargo, laterally tilt up to 20 degrees on a tilt table without lifting off; that all ROVs, loaded with two occupants, laterally tilt up to 28 degrees on a tilt table without tipping over; and that all ROVs, in an unloaded configuration, meet a stability coefficient calculated from the vehicle's track width, center of gravity, and wheelbase that is at least 1.0.

CPSC staff does not believe the requirements in Section 8, *Lateral Stability,* are adequate to address vehicle rollover. As noted in part D.1.a of this preamble, CPSC staff believes that the lateral stability requirement for ROVs should be in an occupied configuration, and, at a minimum, should be in the 1.03 to 1.45 SSF range.

b. *Vehicle Handling:* The proposed voluntary standard does not include any requirements that address vehicle handling. CPSC staff believes ROVs should exhibit predictable understeering characteristics similar to passenger cars that will be familiar to and safer for drivers. As stated earlier in part D.1.b of this notice, understeering characteristics are safer and more familiar to drivers.

c. *Occupant Retention and Protection:* Section 4.7 of the draft voluntary standard, *Seat Belt,* requires that each seating position in a ROV have a minimum of a three-point seat belt that meets SAE J2292 *Combination Pelvic/Upper Torso (Type 2) Operator Restraint Systems for Off-Road Work Machines.*

The staff does not believe the requirement in section 4.7 is adequate to address occupant retention, especially in a rollover scenario. Occupant retention for ROVs is imperative because the vehicles are used in an off-road environment and at a relatively high rate of speed. CPSC testing indicates the current minimum requirement for a three-point seat belt does not adequately protect the occupant and does not address occupant limbs, torso, and head coming out of the vehicle. The staff believes a number of factors, such as occupant seating location within a vehicle, physical side guards such as doors and shoulder guards, four-point seat belts, and technologies for increasing seat belt use, can improve occupant retention.

E. Regulatory Alternatives To Address the Risks of Injury

The Commission could address the risks of injury associated with ROVs through rulemaking. Alternatively, the Commission could defer to the voluntary standards process. Based on the continuing deaths and injuries involving ROVs and a review of the draft requirements currently proposed by ROHVA, the Commission has preliminarily determined that the draft voluntary standard will not adequately address the deaths and injuries associated with ROV rollovers and collisions.

F. Request for Information and Comments

In accordance with section 9(a) of the CPSA, the Commission invites comments on the following matters:

1. With respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk.

2. Any existing standard or portion of a standard which could be issued as a proposed regulation.

3. A statement of intention to modify or develop a voluntary standard to address the risk of injury discussed in this notice, along with a description of a plan (including a schedule) to do so.

In addition, the Commission is interested in receiving the following information:

1. Definition of an ROV.

2. Technical reports of testing, evaluation, and analysis of the dynamic stability, handling characteristics, and occupant protection characteristics for ROVs.

3. Technical reports or standards that describe the minimum performance requirements for stability, handling characteristics, and occupant protection characteristics for ROVs.

4. Technical information on test and evaluation methods for defining ROV characteristics that are specifically relevant to the vehicle's stability.

[10] CPSC Release #09–172, Yamaha Motor Corp. Offers Free Repair for 450, 660, and 700 Model Rhino Vehicles, (March 31, 2009).

5. Technical reports and evaluations of any prototype ROVs with enhanced safety designs.

6. Technical information on ROV/vehicle design specific to vehicle handling (*e.g.,* suspension design and the use of sway bars).

7. Minimum and maximum track width considerations in ROV design.

8. Minimum and maximum ground clearance considerations in ROV design.

9. Minimum and maximum speed considerations in ROV design.

10. Information on the center of gravity heights of occupied and unoccupied ROV models currently on the market.

11. Information about the applicability of sensor technology to improve the safety of ROVs.

12. Technical information on technologies for increasing seat belt use.

13. Technical information on technologies for increasing the performance of seat belts.

14. Technical studies and evaluations of three-point, four-point, and five-point seat belts.

15. Technical information on ROPS design as it pertains to ground impact footprint and potential crushing injuries to the occupant.

16. Information on test procedures to evaluate occupant retention and protection performance during roll over.

17. Information on how non-fatal injuries associated with ROVs compare with those associated with ATVs in terms of severity and type of injury.

List of Relevant Documents

1. Briefing memorandum from Caroleene Paul, Project Manager, Directorate for Engineering Sciences, to the Commission, ''Advance Notice of Proposed Rulemaking (ANPR) for Recreational Off-Highway Vehicles (ROVs),'' September 25, 2009.

2. Memorandum from Caroleene Paul, Division of Mechanical Engineering, CPSC, to Robert J. Howell, Assistant Executive Director for Hazard Identification and Reduction, ''Recreational Off-Highway Vehicles (ROVs),'' September 25, 2009.

3. Memorandum from Sarah Garland, Mathematical Statistician, Division of Hazard Analysis, CPSC, and Robin Streeter, Mathematical Statistician, Division of Hazard Analysis, CPSC, to Caroleene Paul, Project Manager, Directorate for Engineering Sciences, ''Review of Reported Injuries and Fatalities Associated with Recreational Off-Highway Vehicles (ROVs),'' September 2009.

4. Memorandum from Robert Franklin, Economist, Directorate for Economic Analysis, CPSC, to Caroleene Paul, Project Manager, Directorate for Engineering Sciences, ''Recreational Off-Highway Vehicles: Market Information,'' September 25, 2009.

Dated: October 22, 2009.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E9–25959 Filed 10–27–09; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1301

[Docket No. DEA–324a]

RIN 1117–AB21

Registration Requirements for Individual Practitioners Operating in a ''Locum Tenens'' Capacity

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Advance notice of proposed rulemaking.

Summary: On December 1, 2006, the Drug Enforcement Administration (DEA) published in the **Federal Register** a Final Rule ''Clarification of Registration Requirements for Individual Practitioners'' (71 FR 69478). The Final Rule makes it clear that when an individual practitioner practices in more than one State, he or she must obtain a separate DEA registration for each State. The Final Rule also noted that DEA would address its policy regarding locum tenens practitioners in a separate future document. To adequately address this issue, DEA is publishing this Advance Notice of Proposed Rulemaking to seek information useful to the agency in promulgating regulations regarding locum tenens practitioners.

DATES: Written comments must be postmarked on or before December 28, 2009, and electronic comments must be sent on or before midnight Eastern time December 28, 2009.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–324'' on all written and electronic correspondence. Written comments being sent via regular or express mail should be sent to the Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152. Comments may be sent to DEA by sending an electronic message to *dea.diversion.policy@usdoj.gov.* Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file formats other than those specifically listed here.

Please note that DEA is requesting that electronic comments be submitted before midnight Eastern Time on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at midnight Eastern Time on the day the comment period closes. Commenters in time zones other than Eastern Time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

FOR FURTHER INFORMATION CONTACT: Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152; telephone: (202) 307–7297.

SUPPLEMENTARY INFORMATION: *Posting of Public Comments:* Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the Drug Enforcement Administration's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph

of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Drug Enforcement Administration's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the ''For Further Information'' paragraph.

DEA's Legal Authority

DEA implements and enforces the Comprehensive Drug Abuse Prevention and Control Act of 1970, often referred to as the Controlled Substances Act (CSA) and the Controlled Substances Import and Export Act (CSIEA), (21 U.S.C. 801–971), as amended. DEA publishes the implementing regulations for these statutes in Title 21 of the Code of Federal Regulations (CFR), Parts 1300 to end. These regulations are designed to ensure that there is a sufficient supply of controlled substances for medical, scientific, and other legitimate purposes and to deter the diversion of controlled substances to illegal purposes.

Controlled substances are drugs that have a potential for abuse and psychological and physical dependence; these include substances classified as opioids, stimulants, depressants, hallucinogens, anabolic steroids, and drugs that are immediate precursors of these classes of substances. DEA lists controlled substances in 21 CFR part 1308. The substances are divided into five schedules: Schedule I substances have a high potential for abuse and have no accepted medical use in treatment in the United States. These substances may only be used for research, chemical analysis, or manufacture of other drugs. Schedule II–V substances have an accepted medical use and also have a potential for abuse and psychological and physical dependence.

The CSA mandates that DEA establish a closed system of control for manufacturing, distribution, and dispensing of controlled substances. Any person who manufactures, distributes, dispenses, imports, exports, or conducts research or chemical analysis with controlled substances must register with DEA (unless exempt), keep track of all stocks of controlled substances, and maintain records to account for all controlled substances received, distributed, dispensed, or otherwise disposed of.

Background

The CSA defines ''dispense'' as meaning ''to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance * * *'' (21 U.S.C. 802(10)). The CSA requires that every person who dispenses controlled substances shall obtain from the Attorney General a registration (21 U.S.C. 822(a)(2)). Authority to issue such registrations has been delegated by the Attorney General to the Administrator of the Drug Enforcement Administration (28 CFR 0.100). DEA has established, by regulation, that the period of registration for persons who dispense controlled substances is three years (21 CFR 1301.13(e)(iv)).

The CSA states that the Attorney General shall register practitioners to dispense controlled substances if the applicant for registration is authorized to dispense controlled substances under the laws of the State in which the applicant practices (21 U.S.C. 823(f)). The Attorney General may deny an application for registration if he determines that the issuance of registration would be inconsistent with the public interest. In determining the public interest, the Attorney General is required to consider the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. (21 U.S.C. 823(f))

The CSA further requires that a separate registration be obtained for each principal place of business or professional practice where controlled substances are manufactured, distributed, or dispensed (21 U.S.C. 822(e)). DEA has provided a limited exception to this requirement (21 CFR 1301.12(b)(3)): Practitioners who register at one location, but practice at other locations within the same State, are not required to register for any other location in that State at which they only prescribe controlled substances.

The exception applies only to additional locations within the same State in which the practitioner maintains his DEA registration. DEA individual practitioner registrations are based on a State license to practice medicine and prescribe controlled substances. DEA relies on State licensing boards to determine that practitioners are qualified to administer, dispense, or prescribe controlled substances and to determine what level of authority practitioners have, that is, what schedules they may administer, dispense, or prescribe. State authority to conduct the above-referenced activities only confers rights and privileges within the issuing State; consequently, the DEA registration based on a State license cannot authorize controlled substance dispensing outside the State.

DEA discussed the intrastate exception extensively in a Notice of Proposed Rulemaking ''Clarification of Registration Requirements for Individual Practitioners'' [Docket No. DEA–244, RIN 1117–AA89] (69 FR 70576, December 7, 2004) and in a subsequent Final Rule (71 FR 69478, December 1, 2006). This rule clarified that the exception discussed above related only to *intrastate,* as opposed to *interstate,* locations.

Locum Tenens Practitioners

DEA received three comments to its December 7, 2004, Notice of Proposed Rulemaking requesting clarification of the effect of that rule on the practice of ''locum tenens'' practitioners. Locum tenens is a procedure whereby someone substitutes temporarily for another. Latin for ''to hold the place of, to substitute for,'' locum tenens means, in layman's terms, a temporary physician or other practitioner. Usually, locum tenens practitioners contract with a staffing company to perform medical services for a healthcare organization for a specified length of time. The practitioner is paid by the staffing firm itself, which is then paid by the healthcare facility, *i.e.,* the client.

Groups supportive of locum tenens indicate that the practice of locum tenens benefits both practitioners and healthcare organizations because it provides flexibility for both parties. They note that the industry offers temporary opportunities for medical professionals across the country and worldwide. DEA has found one estimate indicating that there are over 100 locum tenens agencies operating in the United States and over 30,000 locum tenens practitioners. The practitioners in

demand are hospital-based specialties including anesthesiology, psychiatry, radiology, pediatrics, and surgery.

The CSA does not specifically reference or acknowledge the practice of locum tenens. DEA regulations do make clear that under 21 CFR 1301.12(a), ''A separate registration is required for each principal place of business or professional practice at one general physical location where controlled substances are manufactured, distributed, imported, or dispensed by a person.'' When a locum tenens practitioner substitutes for another practitioner on a temporary or sporadic basis at that other practitioner's [DEA registered] place of business, that place of business is considered by DEA to be a ''principal place of business or professional practice'' for purposes of the locum tenens practitioner's DEA registration (21 CFR 1301.12(a)).

Since DEA individual practitioner registrations are based on State authority to practice and prescribe controlled substances, a practitioner is not authorized to dispense controlled substances outside the State(s) in which he or she is licensed and registered. Therefore, any locum tenens practice that is conducted in a State other than the State in which the practitioner maintains his DEA registration is subject to a separate DEA registration.

DEA believes that two alternatives presently exist to obtain a separate DEA registration in another State to accommodate a locum tenens practice. First, if the practitioner is licensed to practice and to handle controlled substances in that second state, he may submit an address change for his current DEA registration for the temporary practice location. There is no cost to change an address, even temporarily, and it generally takes one week to process. At the end of the locum tenens practice, the practitioner may submit a request to change his address to his new primary place of business, within the same state.

Second, if the locum tenens service is with a hospital or other institution registered with DEA, if the hospital agrees, and if State law allows, the practitioner may use the DEA registration of that hospital or other institution to administer, dispense, or prescribe controlled substances so long as all requirements are met (21 CFR 1301.22(c)). Specifically:

> An individual practitioner who is an agent or employee of a hospital or other institution may, when acting in the normal course of business or employment, administer, dispense, or prescribe controlled substances under the registration of the hospital or other institution which is registered in lieu of being registered himself, provided that:
>
> (1) Such dispensing, administering or prescribing is done in the usual course of his professional practice;
>
> (2) Such individual practitioner is authorized or permitted to do so by the jurisdiction in which he is practicing;
>
> (3) The hospital or other institution by whom he is employed has verified that the individual practitioner is so permitted to dispense, administer, or prescribe drugs within the jurisdiction;
>
> (4) Such individual practitioner is acting only within the scope of his employment in the hospital or institution;
>
> (5) The hospital or other institution authorizes the individual practitioner to administer, dispense or prescribe under the hospital registration and designates a specific internal code number for each individual practitioner so authorized. The code number shall consist of numbers, letters, or a combination thereof and shall be a suffix to the institution's DEA registration number, preceded by a hyphen (*e.g.,* APO123456–10 or APO123456–A12); and
>
> (6) A current list of internal codes and the corresponding individual practitioners is kept by the hospital or other institution and is made available at all times to other registrants and law enforcement agencies upon request for the purpose of verifying the authority of the prescribing individual practitioner. (21 CFR 1301.22(c))

This waiver places the controlled substance registration and recordkeeping responsibility with the hospital or other institution; therefore, there is no need for individual DEA registration. However, the individual practitioner must still maintain State licensure.

State Regulations

As DEA discussed in its proposed and final rules regarding the clarification of registration by individual practitioners (69 FR 70576, December 7, 2004; 71 FR 69478, December 1, 2006), the issuance by DEA of an individual practitioner registration is predicated, in part, on the practitioner being authorized (*e.g.,* licensed) to dispense controlled substances by the State in which he practices (21 U.S.C. 823(f)). Valid State authority to dispense controlled substances is a necessary, but not sufficient, condition for obtaining a DEA registration. DEA will not register a practitioner at a particular location within a State if the practitioner lacks valid State authority to dispense controlled substances in that State. DEA registration serves, in part, to reflect that the individual practitioner has been granted some level of controlled substances authority by the State. In light of the above, a DEA registration is considered to be related directly and exclusively to the license issued to the practitioner by the State in which he maintains the registration. These principles are discussed extensively in DEA's proposed and final rules referenced above.

While DEA is aware that a few States have legislation or regulations regarding the locum tenens industry, DEA does not believe that the information it has regarding States' legislation and/or regulations is complete. DEA notes that States may address locum tenens under general legislative authority and through a variety of State regulatory entities, including State boards of medicine and State licensing commissions. Therefore, as discussed further below, DEA is specifically seeking information from State regulatory authorities regarding States' legislative and/or regulatory requirements for locum tenens practitioners, agencies, and entities that contract with these persons.

Comments Requested

DEA is soliciting information from the locum tenens industry so that DEA may obtain a better understanding of this industry and how it functions. DEA seeks to clarify the requirements that apply to locum tenens practitioners, especially after considering the December 2006 final rule that specified that only intrastate locations are subject to the exception for registration at separate locations. Commenters are encouraged to include the comment number enumerated below in their response. Although all comments are welcome, DEA is particularly interested in comments regarding the questions listed below. These questions are separated into groups by area of interest. The groups are:

- Locum tenens practitioners
- Those that employ and place locum tenens practitioners
- Institutions that retain the services of locum tenens practitioners
- State regulatory authorities

Locum Tenens Practitioners

1. In your experience, what types of practitioners participate in locum tenens activities (*e.g.,* physicians, dentists, nurse practitioners)? Please specify your type of licensure.

2. How long is the typical locum tenens assignment?

3. Do locum tenens practitioners seek State/Federal licensure or registration prior to accepting a position as a locum tenens practitioner?

4. What is the length of time between hiring for the position and reporting to duty?

5. Do practitioners secure locum tenens positions independently or through an agency?

6. As locum tenens practitioners, do you administer, dispense and prescribe controlled substances? Does your authority to do so vary in the States in which you practice?

7. Can you have more than one locum tenens job at a time?

Those That Employ and Place Locum Tenens Practitioners

8. What role do you have in the locum tenens process?

9. Do you assist with State and Federal licensure/registration? If so, how?

10. What types of practitioners do you employ or place (*e.g.,* physicians, dentists, nurse practitioners)?

11. How do you verify the locum tenens practitioner's credentials?

12. Are criminal background checks performed on locum tenens practitioners?

13. What is the geographical coverage for locum tenens (*e.g.,* local, statewide, multi-state, national)?

14. How much time is there between assignments for one practitioner?

Institutions That Retain the Services of Locum Tenens Practitioners

15. How many locum tenens placement agencies do you contract with?

16. How frequently do you secure locum tenens services?

17. What credentialing checks do you perform on the locum tenens practitioners working for you? Do you perform fewer checks for practitioners supplied by agencies than you do for practitioners you contract with individually?

18. For how long do you secure locum tenens services (i.e., duration)?

19. For what specialties do you use locum tenens practitioners?

20. What authority do you grant locum tenens practitioners? (For example, can they administer, dispense, or prescribe controlled substances? Under whose DEA registration would such an activity occur?)

21. Do you grant locum tenens practitioners the same controlled substance authority that other practitioners using the institution's DEA registration to dispense controlled substances have? If not, why not?

State Regulatory Authorities

22. What are the State requirements for locum tenens practice for practitioners (*e.g.,* physicians, dentists)?

23. Does the State waive State medical licensure (or automatically grant temporary courtesy licensure) for locum tenens practitioners if they are properly licensed in another State? If so, what checks are performed to confirm State licensure in the other State?

24. If granted, for how long is the waiver or courtesy licensure?

25. What are the State requirements for locum tenens practice for mid-level practitioners (*e.g.,* physician assistants, nurse practitioners)?

26. Does the State waive State licensure (or automatically grant temporary courtesy licensure) for locum tenens practitioners who are mid-level practitioners if they are properly licensed in another State? If so, what checks are performed to confirm State licensure in the other State?

27. If granted, for how long is the waiver or courtesy licensure?

28. If the State requires State licensure with the medical or other professional board, how long is it good for?

29. Does the State grant locum tenens practitioners the same controlled substance authority that it grants to practitioners that are fully licensed by the State professional board? If not, why not?

30. To dispense controlled substances, must a locum tenens practitioner obtain a State controlled substance registration?

31. Does the State medical or other professional board report board actions against locum tenens practitioners to the National Practitioner database and to States in which the locum tenens practitioner holds a license?

Regulatory Certifications

This action is an Advance Notice of Proposed Rulemaking (ANPRM). Accordingly, the requirement of Executive Order 12866 to assess the costs and benefits of this action does not apply. Rather, among the purposes DEA has in publishing this ANPRM is to seek information from the public regarding locum tenens practitioners. Similarly, the requirements of section 603 of the Regulatory Flexibility Act do not apply to this action since, at this stage, it is an ANPRM and not a ''rule'' as defined in section 601 of the Regulatory Flexibility Act. Following review of the comments received to this ANPRM, if DEA promulgates a Notice or Notices of Proposed Rulemaking regarding this issue, DEA will conduct all analyses required by the Regulatory Flexibility Act, Executive Order 12866, and any other statutes or Executive Orders relevant to those rules and in effect at the time of promulgation.

Dated: October 21, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. E9–25937 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–331]

Schedules of Controlled Substances: Placement of 5-Methoxy-N,N-Dimethyltryptamine Into Schedule I of the Controlled Substances Act

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: On August 21, 2009, the Drug Enforcement Administration (DEA) published a notice of proposed rulemaking in the **Federal Register**, 74 FR 42217, to place the substance 5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT) and its salts into schedule I of the Controlled Substances Act (CSA). The original 30-day comment period expired on September 21, 2009. DEA is reopening the comment period for an additional 30-day period.

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before November 27, 2009. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–331'' on all written and electronic correspondence. Written comments being sent via regular or express mail should be sent to the Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152. Comments may be sent to DEA by sending an electronic message to *dea.diversion.policy@usdoj.gov.* Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept electronic comments containing Microsoft Word, WordPerfect, Adobe PDF, or Excel files only. DEA will not accept any file format other than those specifically listed here.

Please note that DEA is requesting that electronic comments be submitted before midnight Eastern time on the day the comment period closes because

http://www.regulations.gov terminates the public's ability to submit comments at midnight Eastern time on the day the comment period closes. Commenters in time zones other than Eastern time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Comments and Requests for Hearing

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (5 U.S.C. 556 and 557). All persons are invited to submit their comments or objections with regard to this proposal. Requests for a hearing may be submitted by interested persons and must conform to the requirements of 21 CFR 1308.44 and 1316.47. The request should state, with particularity, the issues concerning which the person desires to be heard and the requestor's interest in the proceeding. Only interested persons, defined in the regulations as those ''adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811),'' may request a hearing. 21 CFR 1308.42. Please note that DEA may grant a hearing only ''for the purpose of receiving factual evidence and expert opinion regarding the issues involved in the issuance, amendment or repeal of a rule issuable'' pursuant to 21 U.S.C. 811(a). All correspondence regarding this matter should be submitted to the DEA using the address information provided above.

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the Drug Enforcement Administration's public docket. Such information includes personal identifying information (such as your name, address, *etc.*) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, *etc.*) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Drug Enforcement Administration's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Reopening of Comment Period

On August 21, 2009, the Drug Enforcement Administration (DEA) published a notice of proposed rulemaking in the **Federal Register**, 74 FR 42217, to place the substance 5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT) and its salts into schedule I of the Controlled Substances Act (CSA). If finalized as proposed, this action would impose the criminal sanctions and regulatory controls of schedule I substances under the CSA on the manufacture, distribution, dispensing, importation, exportation, and possession of 5-MeO-DMT. 5-MeO-DMT is related to the schedule I hallucinogen, N,N-dimethyltryptamine (DMT), in its chemical structure and pharmacological properties. Further, 5-MeO-DMT shares pharmacological similarities with several other schedule I hallucinogens such as 2,5-dimethoxy-4-methylamphetamine (DOM), lysergic acid diethylamide (LSD) and mescaline. According to the System to Retrieve Information on Drug Evidence (STRIDE), a Federal database for seized drug exhibits analyzed by DEA laboratories, from January 1999 to December 2008, law enforcement seized 33 drug exhibits and filed 23 cases pertaining to the trafficking, distribution, and abuse of 5-MeO-DMT. Investigations by Federal law enforcement indicate that individuals, especially youths and young adults, are purchasing 5-MeO-DMT from Internet-based chemical suppliers. In addition, there are several instances where 5-MeO-DMT was sold as a counterfeit of MDMA. The Food and Drug Administration has never approved 5-MeO-DMT for marketing as a human drug product in the United States and there are no recognized therapeutic uses of 5-MeO-DMT in the United States. The risks to the public health associated with the abuse of 5-MeO-DMT are similar to the risks associated with those of schedule I hallucinogens. Consequently, 5-MeO-DMT can pose serious health risks to the user and general public through its ability to induce hallucinogenic effects and other sensory distortions and impaired judgment.

In accordance with 21 U.S.C. 811(b) of the CSA, DEA gathered and reviewed the available information regarding the pharmacology, chemistry, trafficking, actual abuse, pattern of abuse, and the relative potential for abuse of 5-MeO-DMT. On February 21, 2007, the Deputy Administrator of the DEA submitted these data to the Acting Assistant Secretary for Health, Department of Health and Human Services. In accordance with 21 U.S.C. 811(b), the Deputy Administrator also requested a scientific and medical evaluation and a scheduling recommendation for 5-MeO-DMT from the Acting Assistant Secretary for Health. On December 18, 2008, the Principal Deputy Assistant Secretary for Health, Department of Health and Human Services (DHHS), sent the Deputy Administrator of the DEA a scientific and medical evaluation and a letter recommending that 5-MeO-DMT and its salts be placed into schedule I of the CSA.

Based on the recommendation of the Assistant Secretary for Health, received in accordance with section 201(b) of the Act (21 U.S.C. 811(b)), and the independent review of the available data by DEA, the Deputy Administrator found that sufficient data exist to support the placement of 5-MeO-DMT into schedule I of the CSA pursuant to 21 U.S.C. 811(a).

DEA's proposed rule made reference to the documents discussed above and stated that these documents were available for viewing on the electronic

docket associated with the rulemaking. Specifically, the documents cited in the rulemaking are as follows:

1. Letter from the Principal Deputy Assistant Secretary for Health, Department of Health and Human Services, recommending that 5-MeO-DMT and its salts be placed into schedule I of the CSA with a scientific and medical evaluation titled ''Basis for the Recommendation to Control 5-Methoxy-Dimethyltryptamine (5-MeO-DMT) in Schedule I of the Controlled Substances Act,'' December 18, 2008.

2. DEA's final scheduling document titled ''5-Methoxy-N,N-Dimethyltryptamine Scheduling Review Document: Eight Factor Analysis,'' July 17, 2009.

After the comment period closed on September 21, 2009, DEA discovered that the supporting documents referenced in the proposed rule were not posted to the electronic docket, thus not available for public viewing. Such documentation has since been posted to the electronic docket and is available for review. DEA wishes to ensure all interested members of the public have an opportunity to review these materials and comment. Accordingly, DEA is reopening the public comment period and will accept comments for an additional 30 days. Comments already submitted in response to the August 21, 2009, notice will be considered and need not be resubmitted.

Dated: October 21, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. E9–25939 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–09–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2010–3; Order No. 321]

Periodic Reporting Rules

AGENCY: Postal Regulatory Commission.

ACTION: Proposed rulemaking; availability of rulemaking petition.

SUMMARY: This document announces a proposed rulemaking in response to a recent Postal Service petition involving periodic reporting rules. The petition, which is the twenty-first in a recent series, addresses the Postal Service's request to prepare annual compliance reports using only the pro forma adjustment financial results.

DATES: Comments are due November 2, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 or *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: Prior to September 30, 2009, section 103 of the Postal Accountability and Enhancement Act (PAEA) required the Postal Service to pay $5.4 billion each year into the Postal Service Retiree Health Benefit Fund. Public Law 109–435, 120 Stat. 3251 (2006). On September 30, 2009, Congress adopted the 2010 Continuing Appropriations Resolution, which, among other things, reduced the payment due on September 30, 2009 from $5.4 billion to $1.4 billion. Legislative Branch Appropriations Act, 2010, Public Law 111–068. It made the revision retroactive by directing that it take effect as if it had been part of the enactment of section 803(a)(1)(B) of the PAEA in 2006.

The President did not sign the 2010 Continuing Appropriations Resolution until the following day, October 1, 2009. According to Generally Accepted Accounting Principles (GAAP), books of account are closed on the last day of the fiscal year. Therefore, under GAAP, the relief contained in the continuing resolution cannot be reflected in the Postal Service's financial accounts for FY 2009.

In an effort to both comply with GAAP, and with the intent of Congress to relieve the Postal Service from $4 billion in health care funding obligations covering the 2009 fiscal year, the Postal Service anticipates filing audited financial statements for both FY 2009 and FY 2010 that present results according to GAAP, but add a column showing a pro forma adjustment of those results which would show the $4 billion reduction in health care obligation taking effect in FY 2009, rather than FY 2010. The Postal Service provided suggested language in its filing which can be accessed via the Commission's Web site: *http://www.prc.gov/Docs/65/65273/Pet.Prop.21.PSRHBF.Accntng.pdf.*

On October 20, 2009, the Postal Service filed a Petition with the Commission asking it to amend its periodic reporting rules to allow the Postal Service to prepare the annual compliance reports that it provides to the Commission each year using only the pro forma results.[1] It argues that the pro forma results would better serve the regulatory goals of the Commission because they would more accurately reflect its actual financial condition, and would make its financial reporting to the Commission consistent with the treatment that it anticipates the Office of Personnel Management and the Office of Management and Budget will apply to the Postal Service's finances in preparing the Federal budget. *Id.* at 5.

The Postal Service asks the Commission to process its proposed change in analytic principles expeditiously. It notes that it is required to submit all of its FY 2009 financial results to the Government Financial Reporting System by November 16, 2009. It states that it will require significant lead time to prepare those materials. It expresses the hope that meeting this timeline will be made feasible by what it believes to be the narrowness of the issue that its proposal presents. *Id.* at 6.

Because of the need for expedition described above, the Commission will require that public comments be submitted by November 2, 2009. The Commission anticipates that it may set an effective date for any proposed change to its periodic reporting rules resulting from this proceeding that is less than the 30-day period normally required for substantive rules considered under 5 U.S.C. 553.[2]

It is ordered:

1. The Commission establishes Docket No. RM2010–3 to consider the matters raised by the Petition of the United States Postal Service Requesting Authorization to Utilize Pro Forma Accounting Data in Periodic Reporting (Proposal Twenty-One).

2. Interested persons may submit initial comments on or before November 2, 2009.

3. The Commission will determine the need for reply comments after review of the initial comments.

4. R. Kevin Harle is designated to serve as the Public Representative representing the interests of the general public in this proceeding.

5. The Secretary shall arrange for publication of this notice in the **Federal Register.**

Authority: 39 U.S.C. 3652.

[1] Petition of the United States Postal Service Requesting Authorization to Utilize Pro Forma Accounting Data in Periodic Reporting (Proposal Twenty-One), October 20, 2009 (Petition).

[2] 5 U.S.C. 553(d)(3) allows substantive rules considered under 5 U.S.C. 553 to take effect in less than 30 days from the date that the rule is approved for ''good cause found and published with the rule.''

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. E9–25994 Filed 10–27–09; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[EPA–HQ–OAR–2003–0146; FRL–8972–3]

RIN 2060–AO55

National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed partial withdrawal of final rule.

SUMMARY: EPA is proposing to withdraw the residual risk and technology review portions of the final rule amending the National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries, which was signed by then Administrator Stephen Johnson, on January 16, 2009.

DATES: Written comments must be received on or before November 27, 2009, unless a public hearing is requested by November 9, 2009. If a hearing is requested on the proposed partial withdrawal, written comments must be received by December 14, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0146, by one of the following methods:

- *E-mail:* Comments may be sent by electronic mail (e-mail) to *a-and-r-Docket@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2003–0146.
- *Fax:* Fax your comments to: (202) 566–9744, Attention Docket ID No. EPA–HQ–OAR–2003–0146.
- *Mail:* Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2003–0146. Please include a total of two copies. We request that a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).
- *Hand Delivery:* In person or by courier, deliver comments to: EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2003–0146. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

We request that you also send a separate copy of each comment to the contact persons listed below (see **FOR FURTHER INFORMATION CONTACT**).

CBI: Do not submit information containing CBI to EPA through *http://www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2003–0146. Clearly mark the part of all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Public Hearing: If anyone contacts EPA requesting to speak at a public hearing by November 9, 2009, a public hearing will be held on November 12, 2009. Persons interested in presenting oral testimony or inquiring as to whether a public hearing is to be held should contact Mr. Bob Lucas, listed in the **FOR FURTHER INFORMATION CONTACT** section, at least 2 days in advance of the hearing. If a public hearing is held, it will be held at 10 a.m. at the EPA's Environmental Research Center Auditorium, Research Triangle Park, NC, or an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Lucas, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541–0884; fax number: (919) 541–0246; e-mail address: *lucas.bob@epa.gov.*

SUPPLEMENTARY INFORMATION: Section 112 of the Clean Air Act (CAA) establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, after EPA has identified categories of sources emitting one or more of the HAP listed in section 112(b) of the CAA, section 112(d) calls for us to promulgate national emission standards for

hazardous air pollutants (NESHAP) for those sources. The EPA is then required to review these technology-based standards and to revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years, under CAA section 112(d)(6). The second stage in standard-setting focuses on reducing any remaining ''residual'' risk according to CAA section 112(f).

On January 16, 2009, then Administrator Stephen Johnson signed a final rule amending the National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries and the signed rule was made publicly available on EPA's Web site. The signed rule included several different actions. First, it promulgated maximum achievable control technology (MACT) standards under sections 112(d)(2) and (3) for heat exchange systems, which EPA had not addressed in the original Refinery MACT 1 rule. Second, pursuant to CAA section 112(f)(2), the rule addressed residual risk for all Refinery MACT 1 sources, including heat exchange systems, and it addressed the technology review pursuant to CAA section 112(d)(6) for all sources addressed in the original Refinery MACT 1 rule. Additionally, we updated the table in the Refinery MACT 1 standards (Table 6) that cross-references the General Provisions in 40 CFR part 63, subpart A, and made a few additional clarifications to dates and cross-references in the Refinery MACT 1 standards.

The signed rule was submitted to the Office of the Federal Register for publication. Rahm Emanuel, Assistant to the President and Chief of Staff, issued a memorandum on January 20, 2009, directing Agencies to withdraw from the Office of the Federal Register ''all proposed or final regulations that have not been published in the **Federal Register** so that they can be reviewed and approved by a department or agency head.'' Although there was an exception for ''regulations subject to statutory or judicial deadlines,'' the Agency chose not to apply the exception in this case. One portion of the final rule, the CAA section 112(d)(6) review, was performed pursuant to the terms of a Consent Decree, which, as modified, required that by January 16, 2009, EPA ''shall sign and promptly forward to the **Federal Register** for publication either final revisions to the standards for petroleum refineries in 40 CFR Part 63, Subpart CC pursuant to 42 U.S.C. 7412(d)(6) or a final determination that no revisions are necessary.'' Former Administrator Stephen Johnson signed the rule on January 16, 2009, and promptly forwarded it to the **Federal Register** office, thus, fulfilling this obligation.[1]

Upon further review, EPA has determined that the residual risk and technology reviews may not accurately characterize the risk posed by this source category. We recently responded to a Request for Correction under EPA's Information Quality Guidelines from the City of Houston. (Letter to U.S. EPA Information Quality Guidelines staff from the Honorable Bill White, Mayor of Houston, July 9, 2008.) In that response, we recognized that we are currently taking action (and plan to take additional action) to gather better emissions information from the refining industry. Additionally, we note that during the comment period on the proposed rule, similar issues were raised concerning the representativeness of the emissions data, and whether they provide an accurate basis for characterizing the risks posed. Accordingly, after additional consideration of these issues, we believe it is necessary to withdraw the rule that was signed on January 16, 2009, so that we may develop a more robust analysis based on the improved information we are developing.

For these reasons, EPA is proposing to withdraw the signed final rule that included the residual risk and technology review for Refinery MACT 1 sources to provide the Agency with time to collect additional data and perform these analyses. Once EPA has undertaken these activities, we will provide the public with an opportunity to comment on a new proposed rule that would be issued.

Simultaneous with the issuance of this proposal, we are publishing in the **Federal Register** a final rule identical in substance to that signed on January 16, 2009, for: (1) The technology-based MACT standards for heat exchange systems under section 112(d)(2) and (3) of the CAA; (2) revisions to Table 6 of the existing Refinery MACT 1 rule (subpart CC), which describes the application of the NESHAP General Provisions in 40 CFR part 63, subpart A to subpart CC; and (3) the other conforming changes and corrections that were included as part of the January 16, 2009 rule. The portions of the January 16, 2009 rule that are being published as a final rule are included in a new **Federal Register** notice signed by Administrator Jackson and, regarding those issues, are identical in substance to the final rule that was signed by former Administrator Stephen Johnson.

[1] We note that on January 30, 2009, the litigants notified EPA by letter that they believed the Agency had discharged its obligation under the consent decree and that ''further review of the rule pursuant to the Emanuel memo will not violate the consent decree.''

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 15, 2009.

Lisa P. Jackson,

Administrator.

[FR Doc. E9–25453 Filed 10–27–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[EPA–HQ–OPPT–2005–0049; FRL–8795–9]

RIN 2070–AJ55

Lead; Amendment to the Opt-out and Recordkeeping Provisions in the Renovation, Repair, and Painting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing several revisions to the Lead Renovation, Repair, and Painting Program (RRP) rule that published in the **Federal Register** on April 22, 2008. The rule establishes accreditation, training, certification, and recordkeeping requirements as well as work practice standards on persons performing renovations for compensation in most pre-1978 housing and child-occupied facilities. In this document, EPA is proposing to eliminate the ''opt-out'' provision that currently exempts a renovation firm from the training and work practice requirements of the rule where the firm obtains a certification from the owner of a residence he or she occupies that no child under age 6 or pregnant women resides in the home and the home is not a child-occupied facility. EPA is also proposing to require renovation firms to provide a copy of the records demonstrating compliance with the training and work practice requirements of the RRP rule to the owner and, if different, the occupant of the building being renovated or the operator of the child-occupied facility.

DATES: Comments must be received on or before November 27, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2005–0049, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2005–0049. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2005–0049. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Marc Edmonds, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–0758; e-mail address: *edmonds.marc@epa.gov*.

Hearing- or speech-challenged individuals may access the numbers in this unit through TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you operate a training program required to be accredited under 40 CFR 745.225, if you are a firm who must be certified to conduct renovation activities in accordance with 40 CFR 745.89, or if you are a professional (individual or firm) who must be certified to conduct lead-based paint activities in accordance with 40 CFR 745.226.

This proposed rule applies only in States, Territories, and Indian Tribal areas that do not have authorized programs pursuant to 40 CFR 745.324. For further information regarding the authorization status of States, Territories, and Indian Tribes, contact the National Lead Information Center (NLIC) at 1–800–424–LEAD [5323]. Hearing- or speech-challenged individuals may access this number through TTY by calling the toll-free Federal Relay Service at 1–800–877–8339. Potentially affected categories and entities may include, but are not limited to:

• Building construction (NAICS code 236), e.g., single-family housing construction, multi-family housing construction, residential remodelers.

• Specialty trade contractors (NAICS code 238), e.g., plumbing, heating, and air-conditioning contractors, painting and wall covering contractors, electrical contractors, finish carpentry contractors, drywall and insulation contractors, siding contractors, tile and terrazzo contractors, glass and glazing contractors.

• Real estate (NAICS code 531), e.g., lessors of residential buildings and dwellings, residential property managers.

• Child day care services (NAICS code 624410).

• Elementary and secondary schools (NAICS code 611110), e.g., elementary schools with kindergarten classrooms.

• Other technical and trade schools (NAICS code 611519), e.g., training providers.

• Engineering services (NAICS code 541330) and building inspection services (NAICS code 541350), e.g., dust sampling technicians.

• Lead abatement professionals (NAICS code 562910), e.g., firms and supervisors engaged in lead-based paint activities.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 745.89, 40 CFR 745.225, and 40 CFR 745.226. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. Agency's Authority for Taking this Action

This proposed rule is being issued under the authority of the Toxic Substances Control Act (TSCA) sections 402(c)(3), 404, 406, and 407 (15 U.S.C. 2682(c)(3), 2684, 2686, and 2687).

B. Introduction

In the **Federal Register** issue of April 22, 2008, under the authority of sections 402(c)(3), 404, 406, and 407 of TSCA, EPA issued its final RRP rule (Ref. 1). The final RRP rule, codified in 40 CFR part 745, subparts E, L, and Q, addresses lead-based paint hazards created by renovation, repair, and painting activities that disturb painted surfaces in target housing and child-occupied facilities.

Shortly after the RRP rule was published, several petitions were filed challenging the rule. These petitions were consolidated in the Circuit Court of Appeals for the District of Columbia Circuit. On August 24, 2009, EPA signed an agreement with the environmental and children's health advocacy groups in settlement of their petitions. In this agreement EPA committed to propose several changes to the RRP rule, including the changes discussed in this document.

The RRP rule establishes requirements for training renovators, other renovation workers, and dust sampling technicians; for certifying renovators, dust sampling technicians, and renovation firms; for accrediting providers of renovation and dust sampling technician training; for renovation work practices; and for recordkeeping. Interested States, Territories, and Indian Tribes may apply for and receive authorization to administer and enforce all of the elements of the new renovation requirements. More information on the RRP rule may be found in the **Federal Register** document announcing the RRP rule or on EPA's website at *http://www.epa.gov/lead/pubs/renovation.htm*.

Many provisions of the RRP rule were derived from the existing lead-based paint activities regulations at 40 CFR part 745, subpart L (Ref. 2). These existing regulations were promulgated in 1996 under TSCA section 402(a), which defines lead-based paint activities in target housing as inspections, risk assessments, and abatements. The 1996 regulations cover lead-based paint activities in target housing and child-occupied facilities, along with limited screening activities called lead hazard screens. These regulations established an accreditation program for training providers and a certification program for individuals and firms performing these activities. Training course accreditation and individual certification was made available in five disciplines: Inspector, risk assessor, project designer, abatement supervisor, and abatement worker. In addition, these lead-based paint activities regulations established work practice standards and recordkeeping requirements for lead-based paint activities in target housing and child-occupied facilities.

The RRP rule created two new training disciplines in the field of lead-based paint: Renovator and dust sampling technician. Persons who successfully complete renovator training from an accredited training provider are certified renovators. Certified renovators are responsible for ensuring that renovations to which they are assigned are performed in compliance with the work practice requirements set out in 40 CFR 745.85. Persons who successfully complete dust sampling technician training from an accredited training provider are certified dust sampling technicians. Certified dust sampling technicians may be called upon to collect dust samples after renovation activities have been completed.

The RRP rule contains a number of work practice requirements that must be followed for every covered renovation in target housing and child-occupied facilities. These requirements pertain to warning signs and work area containment, the restriction or prohibition of certain practices (e.g., high heat gun, torch, power sanding, power planing), waste handling, cleaning, and post-renovation cleaning verification. The firm must ensure compliance with these work practices. Although the certified renovator is not required to be on-site at all times, while the renovation project is ongoing, a certified renovator must nonetheless regularly direct the work being performed by other workers to ensure that the work practices are being followed.

C. Opt-out Provision

The RRP rule included a provision that exempts a renovation firm from the training and work practice requirements of the rule where the firm obtains a certification from the owner of a residence he or she occupies that no child under age 6 or pregnant women resides in the home and the home is not a child-occupied facility. Unless the target housing meets the definition of a child-occupied facility, if an owner-occupant signed a statement that no child under age 6 and no pregnant woman reside there and an acknowledgment that the renovation firm will not be required to use the lead-safe work practices contained in EPA's RRP rule, the renovation activity is not subject to the training, certification, and work practice requirements of the rule. Conversely, if the owner-occupant does not sign the certification and acknowledgement (even if no children under age 6 or no pregnant women reside there), or if the owner-occupant

chooses not sign the opt-out certification and acknowledgement for other reasons, the renovation is subject to the requirements of the RRP rule.

After further consideration of the opt-out provision, the Agency believes it is in the best interest of the public to remove the provision. EPA has decided it is important to require the RRP work practices and training and certification requirements in target housing even if there is no child under age 6 or pregnant woman residing there. While the RRP rule focused mainly on protecting young children and pregnant women from lead hazards, exposure can result in adverse health effects for older children and adults as well. By removing the opt-out provision the rule will go farther toward protecting older children and adults occupants of target housing where no child under age 6 or pregnant woman resides.

In addition, the opt-out provision may not be sufficiently protective for children under age 6 and pregnant women, the vulnerable populations identified in the RRP rule, given that no known safe level of lead exposure has been identified. The potential adverse health effects of lead exposure are explained in the preamble to the RRP final rule (Ref. 1, p. 21693). As pointed out by a number of commenters on the RRP rule, the opt-out provision does not protect families with young children who may purchase recently renovated target housing. Removal of the opt-out will result in fewer homes being purchased with pre-existing lead hazards. Under the RRP rule, the opt-out provision was limited to owner-occupied target housing and did not extend to vacant rental housing because of the concern that future tenants could unknowingly move into a rental unit where dust-lead hazards created by the renovation are present. In the same way, dust-lead hazards created during renovations in an owner-occupied residence conducted prior to a sale will be present for the next occupants. It is common for home owners to perform activities that disturb paint before selling a house, thus increasing the likelihood of lead hazards being present for someone buying a home, which may include a family with a child under age 6 or a pregnant woman.

Renovations performed under the opt-out provision are also likely to result in exposures for vulnerable populations in other ways. Visiting children who do not spend enough time in the housing to render it a child-occupied facility may nevertheless be exposed to lead from playing in dust-lead hazards created by renovations. For example, children may spend time in the homes of grandparents, but those homes may be eligible for the opt-out provision of the RRP rule. A homeowner who signs an opt-out statement may not realize that she is pregnant. Eliminating the opt-out provision will also protect families with young children residing near or adjacent to homes undergoing renovations. Under the RRP rule, an owner occupant can take advantage of the opt-out provision even if a child under age 6 or a pregnant woman lives in an adjacent home. Renovations on the exterior of a residence can spread leaded dust and debris some distance from the renovation activity, which is why, for regulated renovations, EPA requires renovation firms to cover the ground with plastic sheeting or other impermeable material a distance of 10 feet from the renovation and take extra precautions when in certain situations to ensure that dust and debris does not contaminate other buildings or other areas of the property or migrate to adjacent properties. There are approximately 2 million owner-occupied, single-family attached homes built before 1978. Renovations on the exteriors of these homes are likely to contaminate neighboring yards and porches resulting in exposure outside the house as well as inside because dust can be tracked into the home. Many more owner-occupied, single-family detached homes are located in close proximity to each other, and renovations performed under the opt-out provision present a similar risk for these homes.

Moreover, EPA believes that implementing the regulations without the opt-out provision promotes, to a greater extent, the statutory directive to promulgate regulations covering renovation activities in target housing. Section 401(17) of TSCA defines target housing as ''any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.'' Among other things, TSCA section 403(c)(3), in turn, directs EPA to promulgate regulations that apply to renovation activities in target housing.

Taking these factors into consideration, EPA is proposing to remove the opt-out provision. EPA requests comment on the appropriateness of removing this provision from the RRP rule.

D. Alternative Approaches

In addition to the approach being proposed, EPA is considering other alternative approaches or work practice requirements for owner-occupied target housing that is not a child-occupied facility and where no children younger than 6 or pregnant women reside. EPA is therefore requesting comment on other possible approaches that would meet EPA's statutory obligation to apply the regulations to target housing and that the standards be safe, reliable, and effective. EPA's request is expressly limited to approaches that might apply to this subset of target housing and EPA is not reopening any issue related to the work practices or other requirements of the rule applicable to housing other than owner-occupied target housing that is not a child-occupied facility and where no children under 6 or pregnant women reside.

For example, EPA is requesting comment on an option that requires the RRP work practices only for exterior renovations. Under this option, unless the target housing meets the definition of a child-occupied facility, if an owner-occupant signed a statement that no child under 6 and no pregnant woman reside there and an acknowledgment that the renovation firm will only be required to use the lead-safe work practices contained in EPA's RRP rule when renovating exteriors then the renovation firm would only be required to follow the RRP work practices when doing exterior renovations, but not when doing interior renovations. This option would address exposures to lead dust from exterior renovations for people living in neighboring homes, particularly attached homes or homes in close physical proximity. EPA examined both interior and exterior work practices in EPA's study entitled ''Characterization of Dust Lead Levels after Renovation, Repair, and Painting Activities'' (the ''Dust Study,'' Ref. 11). According to the Dust Study, exterior work practices were generally effective at reducing lead dust levels generated by exterior renovation activities, which the Dust Study showed can travel far enough from the work site to create lead hazards on or in attached homes or homes in close physical proximity. Additionally, while EPA has not conducted an exposure assessment for any of the options being considered for this proposed rule, individuals residing in homes in close physical proximity could be exposed during the entire renovation and post-renovation phase, and their exposure would not necessarily be considered by an owner-occupant in choosing not to require lead-safe work practices. The duration of exposure will vary under the different scenarios for which EPA is requesting

comment. For example, individuals visiting the interior of the home, or moving in after the completion of renovations, may not generally be exposed for the full duration of the renovation and post-renovation phase. Limiting the work practice requirements to exterior renovations (with the owner-occupant's permission) would address these particular exposures to individuals residing in closely neighboring homes, while significantly reducing the cost of this proposed rule.

EPA is requesting comment on an alternative option under which the only work practices applicable to housing that is not a child-occupied facility and where no children or pregnant women reside would be the restriction or prohibition on certain work practice found at 40 CFR 745.85(a)(3). These include:

1. Open-flame burning or torching of lead-based paint is prohibited.

2. The use of machines that remove lead-based paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, is prohibited unless such machines are used with HEPA exhaust control.

3. Operating a heat gun on lead-based paint is permitted only at temperatures below 1,100 degrees Fahrenheit.

All the other work practice requirements in 40 CFR 745.85 would not be required in target housing that is not a child-occupied facility and where no children or pregnant women reside. Under this option, unless the target housing meets the definition of a child-occupied facility, if an owner-occupant signed a statement that no child under 6 and no pregnant woman reside there and an acknowledgment that the renovation activity is only subject to the specific practices contained in 40 CFR 745.85(a)(3), then the renovation activity would not be subject to the other work practice requirements of 40 CFR 745.85. This option would prohibit or restrict the highest dust generating practices, while reducing costs by not requiring the full suite of practices under 40 CFR 745.85.

EPA is requesting comment on another option under which this subset of target housing would not be subject to the RRP work practices but would instead be subject to dust wipe testing to be performed after the renovation. Under this option, unless the target housing meets the definition of a child-occupied facility, if an owner-occupant signed a statement that no child under 6 and no pregnant woman reside there and an acknowledgment that the renovation activity is only subject to dust wipe testing after the renovation and providing the results to the owner-occupant, then the renovation firm would not be required to conduct the training, certification, and work practice requirements of the rule. The testing results would become part of the record for that house that must be disclosed under section 1018 of Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Public Law 102–550). This option would provide information that could protect potential buyers of a home where renovation was completed prior to the sale, because they would be notified of the results of the dust wipe tests before purchase and could take appropriate action (e.g., thorough cleaning and retesting of the home, or selecting a different home) if the lead results were at a level that raised concerns for them. This group could be of particular concern if the move occurred shortly after the renovation.

EPA is requesting comment on other options that could apply to this category of houses, including any combination of the alternatives described in this unit. Because one goal of adopting an alternative approach would be to reduce the cost and burden of compliance, EPA also requests comment on whether segregating owner-occupied target housing that is not a child-occupied facility and where no children under 6 or pregnant women reside in-and-of-itself creates a burdensome complexity for renovators and whether it would thus be preferable to require the full suite of RRP work practice requirements for all target housing. We also request any qualitative or quantitative estimates of what the cost savings (if any) would be from any of the options discussed in this unit, or any other options that commenters wish to suggest.

As indicated in the RRP rule, EPA has found that renovation projects that disturb lead-based paint create lead-based paint hazards. EPA's Dust Study (Ref. 11), demonstrated that renovation, repair, and painting activities produce large quantities of dust significantly greater than the dust-lead hazard standards. The Dust Study shows that renovations on exteriors of homes resulted in lead levels many times greater than the hazard standard. It also demonstrated that work practices other than those restricted or prohibited by the RRP rule left behind lead dust well above the hazard level when the RRP rule requirements are not followed. EPA requests comment on whether the alternate approaches to this proposed rule in this unit would adequately address lead-based paint hazards created by renovation activities, including any data that would shed light on the reliability, effectiveness, and safety in relation to EPA's lead hazard standards of these approaches or any other options that commenters may suggest.

E. Effective Date

EPA is considering a delay in effective date of this rule, either 6 months or 1 year. Assuming renovators are specialized, such that they would only work in homes subject to the opt-out provision, this proposed rule could increase the number of renovators that need to be certified by 50%. EPA asks for comment on this assumption in Unit IV.A. A delay in the effective date would allow time for certification of additional renovators and may allow for a smoother transition to the expanded coverage proposed in this document. However, EPA is not proposing to delay the effective date because of concerns that a delay would be confusing for the regulated entities and fail to prevent lead exposures due to RRP activities during the transition period.

Furthermore, EPA is confident that its efforts to establish the necessary infrastructure of accredited training providers is sufficient to allow adequate personnel to be trained and available. As of October 9, 2009:

- 169 trainers have applied for accreditation.
- 74 have been accredited, most will offer training in multiple locations.
- The vast majority of the applicants should be approved by the end of the year.

Assuming an average of 85 trainers teaching in 2009 and 165 in 2010, if each gives 3 classes per week beginning in October with 25 participants, over 370,000 renovators would be trained by July 1, 2010. That does not include mass trainings expected to be given at major conferences and other industry gatherings. EPA believes that there is already training capacity. In fact, training providers have reported to EPA that they have recently cancelled training offerings due to a lack of demand.

To further increase the availability of training, EPA has developed a model electronic learning (E-learning) component for the lecture portion of the renovator training (*http://www.epa.gov/lead/pubs/training.htm*). This allows training providers to offer students the opportunity to take the lecture portion of the training at times convenient to them and then go to a physical location to complete the hands-on portion of the training and take the test. Training providers expect to begin offering training through this mechanism by the

end of the year. EPA worked with the National Association of Home Builders (NAHB), the National Center for Healthy Housing (NCHH), and a number of other organizations on this E-learning component.

Over the past year, EPA's activities to encourage accreditation and training have included:

- Mass e-mail/mailings to over 1,200 trainers encouraging them to become accredited.
- Mass e-mail/mailings to over 1,000 trade organizations, trade magazines, unions, and property management associations encouraging them to get trained and certified.
- Presented and/or exhibited information at numerous major trade conferences, reaching tens of thousands of attendees.
- Conducted a trainer webinar with the Department of Housing and Urban. Development on September 15, 2009, as a step-by-step guide to becoming accredited.
- Plan to speak at over a dozen more conferences by the end of the calendar year.

In addition, EPA is working with a large marketing firm to produce a multi-media advertising campaign to ensure that the regulated community knows about the RRP rule and the training opportunities and the general public knows about the benefits of hiring certified firms, thus building demand for certified firms. Starting in the fall of 2009 and continuing through the spring, EPA will be working with the marketing firm to expand its out reach efforts to the public and the regulated community.

EPA has cooperated with the regulated community in many ways to communicate these requirements. Many in the regulated community have been doing a great deal to inform their members and clients about the RRP rule. A few examples include:

- National Association of Home Builders:
  - —Developed a comprehensive web page about the RRP rule at *http://www.nahb.org/leadpaint*.
  - —Sent several memos to their State and Local Executive Officers informing them of the RRP rule and letting them know they need to get trained and certified.
  - —Provides regular updates to local Home Builders Associations through website updates and e-mails.
  - —Featured panel on the RRP rule at periodic national and regional conventions/trade shows.
- National Association of the Remodeling Industry (NARI):
  - —Produced a webinar for members on the RRP rule.
  - —Provide information about the RRP rule to membership and leadership through regular e-mails and snail mail.
  - —Provide information about lead-based paint and the RRP rule in all renewal and new member information packages.
- National Association of Realtors (NAR):
  - —EPA collaborated with NAR on a comprehensive video series explaining the requirements to the real estate community.
- Individual Accredited Training Providers:
  - —Distributed glossy advertising materials and other outreach with messages such as ''Be lead safe. It's the law.'', ''Certify with the best'', etc.

EPA has been meeting regularly with many stakeholders to share information on training and outreach. This group includes: NAHB, NCHH, NARI, Alliance for Healthy Homes, Andersen Windows, Custom Electronic Design and Installation Association, Window and Door Manufacturers Association, Rebuilding Together, Air Conditioning Contractors of America, Pella Corporation, and the Oregon Home Builder's Association. All of these groups are actively working to make sure their members and clients are aware of the requirements of the RRP rule.

EPA therefore requests comment on the need for a delay in the effective date of this rule of either 6 months or 1 year. Given EPA's outreach efforts, is there reason to believe that sufficient certified or trained personnel would not be available to work on housing previously eligible for the opt-out provision as of 60 days after publication of this rule as final? Would a delay in effective date for work on housing previously eligible for the opt-out provision be confusing for the regulated community or the certified personnel?

F. Quantifying Benefits

In quantifying the benefits for the RRP rulemaking EPA considered only the benefits associated with the avoided incidence of IQ loss in children under the age of 6 from reduced lead exposure. These estimates only partially account for the benefits of the RRP rule. These estimates did not include an assessment of at-risk subpopulations or of population level effects other than lost income. The benefits associated with avoiding the other adverse effects associated with lead exposure to both children and adults were excluded from this analysis.

EPA requests information on how it can more fully quantify the benefits associated with these effects for purposes of this proposed rule. To facilitate your preparation of comments on this point, the following is an excerpt from the preamble of the 2008 final Lead National Ambient Air Quality Standard (NAAQS) (Ref. 3). This discussion is based on EPA's ''Air Quality Criteria Document'' (the ''Criteria Document,'' Ref. 13). See also the letters dated March 27, 2007 (Ref. 14) and September 27, 2007 (Ref. 15) from the Clean Air Scientific Advisory Committee's (CASAC) Lead Review Panel. The major adverse effects associated with exposure to lead are also discussed in Chapter 5 of the Economic Analysis (Ref. 5).

1. *Array of health effects and at-risk subpopulations*. Lead has been demonstrated to exert ''a broad array of deleterious effects on multiple organ systems via widely diverse mechanisms of action'' (Ref. 13, p. 8–24 and section 8.4.1). This array of health effects includes effects on heme biosynthesis and related functions, neurological development and function, reproduction and physical development, kidney function, cardiovascular function, and immune function. The weight of evidence varies across this array of effects and is comprehensively described in the Criteria Document. There is also some evidence of lead carcinogenicity, primarily from animal studies, together with limited human evidence of suggestive associations (Ref. 13, sections 5.6.2, 6.7, and 8.4.10). [Footnote (FN) 1. Lead has been classified as a probable human carcinogen by the International Agency for Research on Cancer (inorganic lead compounds), based mainly on sufficient animal evidence, and as reasonably anticipated to be a human carcinogen by the U.S. National Toxicology Program (lead and lead compounds) (Ref. 13, section 6.7.2). EPA considers lead a probable carcinogen (*http:// www.epa.gov/iris/subst/0277.htm* (Ref. 13, p. 6–195)).]

This review is focused on those effects most pertinent to ambient exposures, which, given the reductions in ambient lead levels over the past 30 years, are generally those associated with individual blood lead levels in children and adults in the range of 10 micrograms per deciliter (μg/dL) and lower. These key effects include neurological, hematological, and immune [FN 2. At mean blood lead levels, in children, on the order of 10 μg/dL, and somewhat lower, associations have been found with effects to the immune system, including

altered macrophage activation, increased immunoglobulin E (IgE) levels and associated increased risk for autoimmunity and asthma (Ref. 13, sections 5.9, 6.8, and 8.4.6).] effects for children, and hematological, cardiovascular, and renal effects for adults (Ref. 13, Tables 8–5 and 8–6, pp. 8–60 to 8–62). As evident from the discussions in chapters 5, 6, and 8 of the Criteria Document, ''neurotoxic effects in children and cardiovascular effects in adults are among those best substantiated as occurring at blood lead concentrations as low as 5 to 10 μg/dL (or possibly lower); and these categories are currently clearly of greatest public health concern'' (Ref. 13, p. 8–60). [FN 3. With regard to blood lead levels in individual children associated with particular neurological effects, the Criteria Document states ''Collectively, the prospective cohort and cross-sectional studies offer evidence that exposure to lead affects the intellectual attainment of preschool and school age children at blood lead levels <10 μg/dL (most clearly in the 5 to 10 μg/dL range, but, less definitively, possibly lower).'' (Ref. 13, p. 6–269). FN 4. Epidemiological studies have consistently demonstrated associations between lead exposure and enhanced risk of deleterious cardiovascular outcomes, including increased blood pressure and incidence of hypertension. A meta-analysis of numerous studies estimates that a doubling of blood-lead level (e.g., from 5 to 10 μg/dL) is associated with ~1.0 millimeter of mercury (mm Hg) increase in systolic blood pressure and ~0.6 mm Hg increase in diastolic pressure (Ref. 13, p. E–10).]

The toxicological and epidemiological information available since the time of the last review ''includes assessment of new evidence substantiating risks of deleterious effects on certain health endpoints being induced by distinctly lower than previously demonstrated lead exposures indexed by blood lead levels extending well below 10 μg/dL in children and/or adults'' (Ref. 13, p. 8–25). Some health effects associated with individual blood lead levels extend below 5 μg/dL, and some studies have observed these effects at the lowest blood levels considered. With regard to population mean levels, the Criteria Document points to studies reporting ''lead effects on the intellectual attainment of preschool and school age children at population mean concurrent blood-lead levels [BLLs] ranging down to as low as 2 to 8 μg/dL'' (Ref. 13, p. E–9).

We note that many studies over the past decade, in investigating effects at lower blood lead levels, have utilized the Centers for Disease Control (CDC) advisory level or level of concern for individual children (10 μg/dL) [FN 5. This level has variously been called an advisory level or level of concern (*http:// www.atsdr.cdc.gov/csem/lead/pb__standards2.html*). In addressing children's blood lead levels, CDC has stated, ''Specific strategies that target screening to high-risk children are essential to identify children with BLLs ≥ 10 μg/dL.'' (Ref. 4, p.1)] as a benchmark for assessment, and this is reflected in the numerous references in the Criteria Document to 10 μg/dL. Individual study conclusions stated with regard to effects observed below 10 μg/dL are usually referring to individual blood lead levels. In fact, many such study groups have been restricted to individual blood lead levels below 10 μg/dL or below levels lower than 10 μg/dL. We note that the mean blood lead level for these groups will necessarily be lower than the blood lead level they are restricted below.

Threshold levels, in terms of blood lead levels in individual children, for neurological effects cannot be discerned from the currently available studies (Ref. 13, pp. 8–60 to 8–63). The Criteria Document states, ''There is no level of lead exposure that can yet be identified, with confidence, as clearly not being associated with some risk of deleterious health effects'' (Ref. 13, p. 8–63). As discussed in the Criteria Document, ''a threshold for lead neurotoxic effects may exist at levels distinctly lower than the lowest exposures examined in these epidemiologic studies'' (Ref. 13, p. 8–67). [FN 6. In consideration of the evidence from experimental animal studies with regard to the issue of threshold for neurotoxic effects, the Criteria Document notes that there is little evidence that allows for clear delineation of a threshold, and that ''blood-lead levels associated with neurobehavioral effects appear to be reasonably parallel between humans and animals at reasonably comparable blood-lead concentrations; and such effects appear likely to occur in humans ranging down at least to 5–10 μg/dL, or possibly lower (although the possibility of a threshold for such neurotoxic effects cannot be ruled out at lower blood-lead concentrations)'' (Ref. 13, p. 8–38).]

[P]hysiological, behavioral and demographic factors contribute to increased risk of lead-related health effects. Potentially at-risk subpopulations, also referred to as sensitive subpopulations, include those with increased susceptibility (i.e., physiological factors contributing to a greater response for the same exposure), as well as those with greater vulnerability (i.e., those with increased exposure such as through exposure to higher media concentrations or resulting from behavior leading to increased contact with contaminated media), or those affected by socioeconomic factors, such as reduced access to health care or low socioeconomic status.

While adults are susceptible to lead effects at lower blood lead levels than previously understood (e.g., Ref. 13, p. 8–25), the greater influence of past exposures on their current blood lead levels leads us to give greater prominence to children as the sensitive subpopulation in this review. Children are at increased risk of lead-related health effects due to various factors that enhance their exposures (e.g., via the hand-to-mouth activity that is prevalent in very young children, Ref. 13, section 4.4.3) and susceptibility. While children are considered to be at a period of maximum exposure around 18–27 months, the current evidence has found even stronger associations between blood lead at school age and IQ at school age. The evidence ''supports the idea that lead exposure continues to be toxic to children as they reach school age, and [does] not lend support to the interpretation that all the damage is done by the time the child reaches 2 to 3 years of age'' (Ref. 13, section 6.2.12). The following physiological and demographic factors can further affect risk of lead-related effects in some children.

- Children with particular genetic polymorphisms (e.g., presence of the d-aminolevulinic acid dehydratase-2 [ALAD-2] allele) have increased sensitivity to lead toxicity, which may be due to increased susceptibility to the same internal dose and/or to increased internal dose associated with same exposure (Ref. 13, p. 8–71, sections 6.3.5, 6.4.7.3, and 6.3.6).
- Some children may have blood lead levels higher than those otherwise associated with a given lead exposure (Ref. 13, section 8.5.3) as a result of nutritional status (e.g., iron deficiency, calcium intake), as well as genetic and other factors (Ref. 13, chapter 4 and sections 3.4, 5.3.7, and 8.5.3).
- Situations of elevated exposure, such as residing near sources of ambient lead, as well as socioeconomic factors, such as reduced access to health care or low socioeconomic status (SES) can also contribute to increased blood lead levels and increased risk of associated health effects from air-related lead.
- [C]hildren in poverty and black, non-Hispanic children have notably higher blood lead levels than do

economically well-off children and white children, in general.

2. *Neurological effects in children.* Among the wide variety of health endpoints associated with lead exposures, there is general consensus that the developing nervous system in children is among the, if not the, most sensitive. While blood lead levels in U.S. children have decreased notably since the late 1970s, newer studies have investigated and reported associations of effects on the neurodevelopment of children with these more recent blood lead levels (Ref. 13, chapter 6). Functional manifestations of lead neurotoxicity during childhood include sensory, motor, cognitive, and behavioral impacts. Numerous epidemiological studies have reported neurocognitive, neurobehavioral, sensory, and motor function effects in children with blood lead levels below 10 μg/dL (Ref. 13, sections 6.2 and 8.4). [FN 7. Further, neurological effects in general include behavioral effects, such as delinquent behavior (Ref. 13, sections 6.2.6 and 8.4.2.2), sensory effects, such as those related to hearing and vision (Ref. 13, sections 6.2.7 and 8.4.2.3), and deficits in neuromotor function (Ref. 13, p. 8–36).] As discussed in the Criteria Document, ''extensive experimental laboratory animal evidence has been generated that (a) substantiates well the plausibility of the epidemiologic findings observed in human children and adults and (b) expands our understanding of likely mechanisms underlying the neurotoxic effects'' (Ref. 13, p. 8–25; section 5.3).

Cognitive effects associated with lead exposures that have been observed in epidemiological studies have included decrements in intelligence test results, such as the widely used IQ score, and in academic achievement as assessed by various standardized tests as well as by class ranking and graduation rates (Ref. 13, section 6.2.16 and pp. 8–29 to 8–30). As noted in the Criteria Document with regard to the latter, ''Associations between lead exposure and academic achievement observed in the above-noted studies were significant even after adjusting for IQ, suggesting that lead-sensitive neuropsychological processing and learning factors not reflected by global intelligence indices might contribute to reduced performance on academic tasks'' (Ref. 13, pp. 8–29 to 8–30).

With regard to potential implications of lead effects on IQ, the Criteria Document recognizes the ''critical'' distinction between population and individual risk, identifying issues regarding declines in IQ for an individual and for the population. The Criteria Document further states that a ''point estimate indicating a modest mean change on a health index at the individual level can have substantial implications at the population level'' (Ref. 13, p. 8–77). [FN 8. As an example, the Criteria Document states, ''although an increase of a few mm Hg in blood pressure might not be of concern for an individual's well-being, the same increase in the population mean might be associated with substantial increases in the percentages of individuals with values that are sufficiently extreme that they exceed the criteria used to diagnose hypertension'' (Ref. 13, p. 8–77).] A downward shift in the mean IQ value is associated with both substantial decreases in percentages achieving very high scores and substantial increases in the percentage of individuals achieving very low scores (Ref. 13, p. 8–81). [FN 9. For example, for a population mean IQ of 100 (and standard deviation of 15), 2.3% of the population would score above 130, but a shift of the population to a mean of 95 results in only 0.99% of the population scoring above 130 (Ref. 13, pp. 8–81 to 8–82).] For an individual functioning in the low IQ range due to the influence of developmental risk factors other than lead, a lead-associated IQ decline of several points might be sufficient to drop that individual into the range associated with increased risk of educational, vocational, and social failure (Ref. 13, p. 8–77).

Other cognitive effects observed in studies of children have included effects on attention, executive functions, language, memory, learning, and visuospatial processing (Ref. 13, sections 5.3.5, 6.2.5, and 8.4.2.1), with attention and executive function effects associated with lead exposures indexed by blood lead levels below 10 μg/dL (Ref. 13, section 6.2.5 and pp. 8–30 to 8–31). The evidence for the role of lead in this suite of effects includes experimental animal findings (Ref. 13, section 8.4.2.1; p. 8–31), which provide strong biological plausibility of lead effects on learning ability, memory and attention (Ref. 13, section 5.3.5), as well as associated mechanistic findings.

The persistence of such lead-induced effects is described in the proposal and the Criteria Document (e.g., Ref. 13, sections 5.3.5, 6.2.11, and 8.5.2). The persistence or irreversibility of such effects can be the result of damage occurring without adequate repair offsets or of the persistence of lead in the body (Ref. 13, section 8.5.2). It is additionally important to note that there may be long-term consequences of such deficits over a lifetime. Poor academic skills and achievement can have ''enduring and important effects on objective parameters of success in real life,'' as well as increased risk of antisocial and delinquent behavior (Ref. 13, section 6.2.16).

Multiple epidemiologic studies of lead and child development have demonstrated inverse associations between blood lead concentrations and children's IQ and other cognitive-related outcomes at successively lower lead exposure levels over the past 30 years (Ref. 13, section 6.2.13). For example, the overall weight of the available evidence, described in the Criteria Document, provides clear substantiation of neurocognitive decrements being associated in children with mean blood lead levels in the range of 5 to 10 μg/dL, and some analyses indicate lead effects on intellectual attainment of children for which population mean blood lead levels in the analysis ranged from 2 to 8 μg/dL (Ref. 13, sections 6.2, 8.4.2, and 8.4.2.6). Thus, while blood lead levels in U.S. children have decreased notably since the late 1970s, newer studies have investigated and reported associations of effects on the neurodevelopment of children with blood lead levels similar to the more recent, lower blood lead levels (Ref. 13, chapter 6).

G. Recordkeeping and Reporting

EPA has also determined that public policy would be better served by using the renovation firm recordkeeping requirements to increase awareness of the RRP rule requirements among owners and occupants of renovated target housing or child-occupied facilities. EPA's stated purposes in promulgating the recordkeeping requirements were two-fold. ''The first is to allow EPA or an authorized State to review a renovation firm's compliance with the substantive requirements of the regulation through reviewing the records maintained for all of the renovation jobs the firm has done. The second is to remind a renovation firm what it must do to comply. EPA envisioned that renovation firms would use the recordkeeping requirements and checklist as an aid to make sure that they have done everything that they are required to do for a particular renovation'' (Ref. 1, p. 21745). Several commenters suggested that the recordkeeping requirements could also be used to provide valuable information about the renovation to the owners and occupants of buildings being renovated. EPA responded to these comments by stating that some of the information identified by these commenters was included in the ''Renovate Right'' pamphlet and that the pamphlet was the

best way to get that information to the owners and occupants. With respect to the other items identified by these commenters, EPA stated its belief that the renovation firms were already providing much of this information (Ref. 1, p. 21718).

As part of EPA's preparations to administer the RRP program, EPA has been developing an education and outreach campaign aimed at consumers. In promulgating the RRP rule, EPA recognized the importance of education and outreach to consumers, to teach them about lead-safe work practices and to encourage them to hire certified renovation firms (Ref. 1, p. 21702). EPA's work on the education and outreach campaign has continued to highlight the importance of an informed public to the success of the RRP program at minimizing exposures to lead-based paint hazards that may be created by renovations. As a result, EPA has determined that copies of the records required to be maintained by renovation firms to document compliance with the work practice requirements, if provided to the owners and occupants of the renovated buildings, would serve to reinforce the information provided by the ''Renovate Right'' pamphlet on the potential hazards of renovations and on the RRP rule requirements. While the ''Renovate Right'' pamphlet provides valuable information about the requirements of the RRP rule, the records that a firm would give to owners and occupants would provide useful information regarding rule compliance that is not found in the pamphlet. In covering the significant training and work practice provisions of the RRP rule, these records would enable building owners and occupants to better understand what the renovation firm did to comply with the RRP rule and how the RRP rule's provisions affected their specific renovation. Educating the owners and occupants in this way is likely to improve their ability to assist the EPA in monitoring compliance with the RRP rule.

Therefore, EPA is proposing to require that, when the final invoice for the renovation is delivered, or within 30 days of the completion of the renovation, whichever is earlier, the renovation firm provide information demonstrating compliance with the training and work practice requirements of the RRP rule to the owner of the building being renovated and, if different, to the occupants of the renovated housing or the operator of the child-occupied facility. For renovations in common areas of target housing, the renovation firm would have to provide the occupants of the affected housing units instructions on how to review or obtain this information from the renovation firm at no charge to the occupant. These instructions would have to be included in the notice provided to each affected unit under 40 CFR 745.84(b)(2)(i) or on the signs posted in the common areas under 40 CFR 745.84(b)(2)(ii). EPA is proposing similar requirements for renovations in child-occupied facilities. Under this proposed rule, the renovation firm would be required to provide interested parents or guardians instructions on how to review or obtain a copy of these records at no cost to the parents or guardians. This could be accomplished by mailing or hand delivering these instructions, or by including them on the signs posted under 40 CFR 745.84(c)(2)(ii).

Renovation firms would have to provide training and work practice information to owners and occupants in a short, easily read checklist or other form. EPA's ''Sample Renovation Recordkeeping Checklist'' may be used for this purpose, but firms may develop their own forms or checklists so long as they include all of the required information in a similar format. The specific information that would be required to be provided are the training and work practice compliance information required to be maintained by 40 CFR 745.86(b)(7), as well as identifying information on the manufacturer and model of the test kits used, if any, a description of the components that were tested including their locations, and the test kit results. The checklist or form must include documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed the tasks required by the RRP rule, and that the certified renovator performed the post-renovation cleaning verification. This documentation must include a certification by the certified renovator that the work practices were followed, with narration as applicable. However, EPA is not proposing to require that the renovation firm automatically provide a copy of the certified renovator's training certificate, which must be maintained in the firm's records pursuant to 40 CFR 745.86(b)(7), as an attachment to the checklist or other form.

With respect to the option for dust clearance in lieu of cleaning verification under 40 CFR 745.85(c), the RRP rule requires the renovation firm to provide the associated results from dust wipe sampling to the person who contracted for the renovation. This requirement was promulgated in response to public comments on the applicability of the Lead Disclosure Rule, 40 CFR part 745, subpart F, to dust lead testing reports. These commenters stated that a requirement for the information to be provided to the owner of the property was necessary in order to make sure that the information would be available to be disclosed in the future (Ref. 1, p. 21718). However, in agreeing with these commenters and acknowledging the importance of having the dust sampling reports available to disclose to future purchasers and tenants, EPA neglected to consider the importance of making dust sampling information available to the current occupants of renovated rental target housing or child-occupied facilities. While 40 CFR 745.107 would require renovation-related dust sampling reports to be disclosed to target housing tenants at the next lease renewal, this may be months or years after the renovation was completed. In addition, the Lead Disclosure Rule does not apply to child-occupied facilities in public or commercial buildings, so those tenants may never receive this information.

Therefore, EPA is proposing to require that, if dust clearance is performed in lieu of cleaning verification, the renovation firm provide a copy of the dust wipe sampling report(s) to the owner of the building that was renovated as well as to the occupants, if different. With respect to renovations in common areas of target housing or in child-occupied facilities, EPA is also proposing to require that these records be made available to the tenants of the affected housing units or the parents and guardians of children under age 6 using the child-occupied facilities. Dust sampling reports may be made available to these groups in the same way as training and work practice records, by providing information on how to review or obtain copies in individual notifications or on posted signs.

H. Accreditation and Certification Requirements

EPA was made aware by stakeholders that some renovators want to take the training course closer to April 2010 because they want to maximize their 5–year certification which is not required until the RRP rule becomes effective on April 22, 2010. Under the RRP rule, the 5–year certification begins when the renovator completes the training. The Agency is concerned that if enough renovators wait until April 2010 to take the training it may cause training courses to fill up resulting in a lack of available courses near the effective date.

In order to give renovators incentive to take the course well in advance of the April 2010 effective date, the Agency is considering a change to the requirements that would allow renovator certifications issued on or before the effective date of the RRP rule to last until July 1, 2015. The Agency requests comment on whether it should extend the certification for renovators that get their certification by April 22, 2010.

Another modification EPA is considering involves the requirements for training providers. Under the current requirements for the accreditation of training providers, Principle Instructors must take a 16–hour lead-paint course taught by EPA or an authorized State, Tribe, or Territory. EPA is aware that 16–hours courses are not available in every State, making it difficult for some instructors to get the required training. To address this problem, EPA is considering reducing the hourly requirement to 8 hours. This would allow future instructors to take the 8–hour renovator or dust sampling technician trainings instead of a 16–hour or longer abatement course. The Agency believes that the renovator or dust sampling technician courses would be appropriate training for instructors that want to teach these courses. The Agency requests comment on whether the 16–hour training requirement for Principle Instructors should be reduced to 8 hours.

I. State Authorization

As part of the authorization process, States and Indian Tribes must demonstrate to EPA that they meet the requirements of the RRP rule. The Agency is proposing to give States and Indian Tribes 1 year to demonstrate that their programs include any new requirements the EPA may promulgate, such as the requirements in this proposed rule. A State or Indian Tribe would have to indicate that it meets the requirements of the renovation program in its application for approval or the first report it submits under 40 CFR 745.324(h).

III. References

1. EPA. Lead; Renovation, Repair, and Painting Program; Final Rule. **Federal Register** (73 FR 21692, April 22, 2008) (FRL–8355–7). Available on-line at: *http://www.gpoaccess.gov/fr*.

2. EPA. Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Final Rule. **Federal Register** (61 FR 45778, August 29, 1996) (FRL–5389–9). Available on-line at: *http://www.gpoaccess.gov/fr*.

3. EPA. National Ambient Air Quality Standards for Lead; Final Rule. **Federal Register** (73 FR 66964, November 12, 2008) (FRL–8732–9). Available on-line at: *http://www.gpoaccess.gov/fr*.

4. CDC. Preventing Lead Poisoning in Young Children: A Statement by the Centers for Disease Control and Prevention. Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service. August 2005.

5. EPA. Office of Pollution Prevention and Toxics (OPPT). Economic Analysis for the TSCA Lead Renovation, Repair, and Painting Program Opt-out and Recordkeeping Proposed Rule for Target Housing and Child-Occupied Facilities. October 2009.

6. U.S. Department of Commerce, Bureau of Economic Analysis. Table 1.1.9. Implicit Price Deflators for Gross Domestic Product. August 17, 2009.

7. EPA. Opt-out and Recordkeeping Proposed Rule ICR Addendum for the rulemaking entitled Lead: Elimination of the Opt-Out Provision and Other Amendments to the Renovation, Repair, and Painting Program; Proposed Rule. August 2009.

8. EPA. Initial Regulatory Flexibility Analysis for the Elimination of the Opt-Out Provision and Other Amendments to the Lead Renovation, Repair, and Painting Program; Proposed Rule. August 2009.

9. EPA. Report of the Small Business Advocacy Review Panel on the Lead-based Paint Certification and Training; Renovation and Remodeling Requirements. March 3, 2000.

10. EPA. Lead; Renovation, Repair, and Painting Program; Proposed Rule. **Federal Register** (71 FR 1588, January 10, 2006) (FRL–7755–5). Available on-line at: *http://www.gpoaccess.gov/fr*.

11. EPA. Characterization of Dust Lead Levels after Renovation, Repair, and Painting Activities. November 13, 2007.

12. EPA. Unfunded Mandates Reform Act Statement; Lead: Elimination of the Opt-Out Provision and Other Amendments to the Renovation, Repair, and Painting Program; Proposed Rule. August 2009.

13. EPA. Air Quality Criteria for Lead. October 2006.

14. CASAC. ''Clean Air Scientific Advisory Committee's (CASAC) Review of the 1st Draft Lead Staff Paper and Draft Lead Exposure and Risk Assessments. March 27, 2007. Available on-line at: *http://yosemite.epa.gov/sab/sabproduct.nsf/989B57DCD436111B852572AC0079DA8A/$File/casac-07-003.pdf*.

15. CASAC. Clean Air Scientific Advisory Committee's (CASAC) Review of the 2nd Draft Lead Human Exposure and Health Risk Assessments Document. September 27, 2007. Available on-line at: *http://yosemite.epa.gov/sab/sabproduct.nsf/2DCD6EF49CDD37B285257364005F93E4/$File/casac-07-007.pdf*.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), it has been determined that this proposed rule is a ''significant regulatory action'' under section 3(f)(1) of the Executive Order because EPA estimates that it will have an annual effect on the economy of $100 million or more. Accordingly, this action was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made based on OMB recommendations have been documented in the public docket for this rulemaking as required by section 6(a)(3)(E) of the Executive Order.

In addition, EPA has prepared an analysis of the potential costs and benefits associated with this rulemaking. This analysis is contained in the Economic Analysis for the TSCA Lead Renovation, Repair, and Painting Program Opt-out and Recordkeeping Proposed Rule for Target Housing and Child-Occupied Facilities (Economic Analysis, Ref. 5), which is available in the docket for this action and is briefly summarized here.

1. *Number of facilities and renovations.* This proposed rule applies to 78 million target housing units and child-occupied facilities in pre-1978 facilities. There are approximately 40 million target housing units potentially affected by the removal of the opt-out provision (i.e., owner occupied housing units where no child under age 6 or pregnant woman resides and that do not meet the definition of a child-occupied facility). There are an additional 38 million facilities potentially affected by the requirement that renovators provide owners and occupants with copies of the records required to be maintained by the renovator to document compliance with the training and work practice requirements. Approximately 100,000 of these facilities are child-occupied facilities located in public or commercial buildings, and the remainder are located in target housing (either in rental housing, owner-occupied housing where a child under age 6 or pregnant woman resides, or

owner-occupied housing that meets the definition of a child-occupied facility).

The removal of the opt-out provision will affect approximately 7.2 million renovation events per year in the 40 million housing units previously eligible to use the opt-out provision. In the first year, there will be an estimated 5.4 million renovation, repair, and painting events in these housing units where the rule will cause lead-safe work practices to be used. (In the remaining 1.8 million renovation events, test kits for determining whether a surface contains lead-based paint will indicate that lead-based paint is not present.) EPA expects test kits that more accurately determine whether a painted surface qualifies as lead-based paint will become available in late 2010. Once the improved test kits are available, the number of renovation, repair, and painting events using lead-safe work practices due to the rule in housing previously eligible for the opt-out provision is expected to drop to 3.0 million events per year.

The requirement for renovators to provide owners and occupants with records demonstrating compliance with the training and work practice requirements will affect all of the 7.2 million renovation events per year in housing units previously eligible for the opt-out provision. This new recordkeeping requirement will also affect an additional 11.4 million renovation events per year in the 38 million facilities ineligible for the opt-out provision.

EPA's estimates are based on the assumption that owners of housing eligible for the opt-out provision would always choose to exercise that provision. To the extent that some eligible homeowners would decline to opt out, the number of renovation events affected by the removal of the opt-out would be lower than EPA has estimated, as would the costs of this action and the estimated number of people protected by this action, since they will choose to be protected by the requirements of the RRP rule.

2. *Options evaluated*. EPA considered a variety of options for addressing the risks created by renovation, repair, and painting activities disturbing lead-based paint in housing previously eligible for the opt-out provision. The Economic Analysis analyzed several options, including different options for the effective date of the final rule when published; an option phasing out the opt-out provision depending on when the facility was built (pre-1960 or pre-1978); and different options for the work practices (such as containment, cleaning, and cleaning verification) required in housing previously eligible for the opt-out provision.

All options evaluated in the Economic Analysis would also require renovation firms to provide owners and occupants of the buildings with a copy of the records demonstrating compliance with the training and work practice requirements of the RRP rule. This additional recordkeeping requirement would apply to renovation, repair, and painting activities in all 78 million target housing units and child-occupied facilities.

3. *Benefits*. The benefits of the rule result from the prevention of adverse health effects attributable to lead exposure from renovations in pre-1978 buildings. These health effects include impaired cognitive function in children and several illnesses in children and adults, such as increased adverse cardiovascular outcomes (including increased blood pressure, increased incidence of hypertension, cardiovascular morbidity, and mortality) and decreased kidney function.

Removing the opt-out provision will protect children under the age of 6 who visit a friend, relative, or caregiver's house where a renovation would have been performed under the opt-out provision; children who move into such housing when their family purchases it after such a renovation would have been performed; and children who live in a property adjacent to housing where renovation would have been performed under the opt-out provision. Removing the opt-out provision will also protect individuals age 6 and older who live in houses that would have been renovated under the opt-out provision; who move into such housing; and who live in adjacent properties.

EPA has estimated some of the benefits of the rule by performing calculations based on estimates of the number of individuals in each of these situations and the average benefit per individual in similar situations from previous RRP rule analyses with some simple adjustments. The resulting calculations provide a sense of the magnitude of benefits from this action but should not be interpreted as strict upper or lower bound estimates of total benefits. Based on two scenarios for each of the situations described in the previous paragraph, annualized benefits for the proposed rule may range from approximately $870 million to $3.2 billion assuming a discount rate of 3%, and $920 million to $3.3 billion assuming a discount rate of 7%. Within these scenarios, 10% of these benefits are attributable to avoided losses in expected earnings due to IQ drop in children under 6, and 90% to avoided medical costs (or other proxies for willingness to pay) for hypertension, coronary heart disease, stroke, and the resulting incidence of deaths in older individuals. For children under 6, the largest proportion of these benefits derive from moving into recently renovated housing; for older individuals, the largest proportion derives from on-going residence in houses that would have been renovated under the opt-out provision.

EPA did not estimate benefits for those who live near a house renovated under the opt-out provision unless in a contiguous attached home; those who spend time in a friend's or relative's house renovated under the opt-out provision; and for health effects other than IQ loss in children under 6 and blood pressure effects in older individuals.

To the extent that some eligible homeowners would have declined to opt out, the benefits of this action will be lower than estimated, since exposed persons will already be protected by the requirements of the RRP program.

4. *Costs*. Removing the opt-out provision will require firms performing renovation, repair, and painting work for compensation in housing previously eligible for the opt-out provision to follow the training, certification, and work practice requirements of the RRP rule. This may result in additional costs for these firms. Furthermore, the additional recordkeeping requirements in this proposed rule will increase costs of renovations in all target housing and child-occupied facilities. Costs may be incurred by contractors that work in these buildings, landlords that use their own staff to work in buildings they lease out; and child-occupied facilities that use their own staff to work in buildings they occupy.

The proposed rule is estimated to cost approximately $500 million in the first year. The cost is estimated to drop to approximately $300 million per year starting with the second year, when improved test kits for detecting the presence of lead-based paint are assumed to become available. Over $200 million per year of the cost in subsequent years is due to the work practice requirements in housing previously covered by the opt-out provision. Training for renovators and workers and certification for firms working in housing previously covered by the opt-out provision is estimated to add approximately $50 million per year to the cost. Requiring renovators to provide owners and occupants with copies of the recordkeeping required to document compliance with the RRP rule training and work practice requirements

costs approximately $30 million per year, with about two thirds of this incurred in housing that was previously eligible for the opt-out provision.

Note that the costs of this proposed rule as estimated in the Economic Analysis are expressed in 2005 dollars. To express values in terms of current dollars, the Implicit Price Deflator for Gross Domestic Product as determined by the Bureau of Economic Analysis can be consulted for an indication of how nominal prices for goods and services produced in the economy have changed over time. From 2005 to the second quarter of 2009, the implicit price deflator increased from 100 to 109.753, a difference of approximately 10% (Ref. 6).

The cost estimates for training and certification assume that renovation firms are somewhat specialized in terms of whether they work in facilities where the RRP rule is applicable. However, there may be many instances where firms working in opt-out housing will already have become certified, and their staff been trained, because they also work in regulated facilities ineligible for the opt-out provision. If firms are less specialized than the analysis assumed, there may be little to no incremental training and certification costs due to the proposed rule. Furthermore, to the extent that some eligible homeowners would have declined to opt out, the work practice costs for removing the opt-out provision will be less than estimated. EPA requests comment on the degree to which the same firms and renovators are likely to work both in opt-out housing and in child-occupied facilities and target housing that are ineligible for the opt-out provision.

The options EPA analyzed with a phase in or a delayed effective date for removing the opt-out provision have a lower cost in the first 2 years but have identical costs to the proposed rule beginning in the third year. Costs of the options with different work practice requirements for the housing previously eligible for the opt-out provision would be 1% to 17% lower than the proposed rule. This difference would all be due to lower work practice costs, as the training, certification, and recordkeeping costs would be the same for these options as for this proposed rule.

B. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*. EPA has prepared an Information Collection Request (ICR) document to amend an existing approved ICR. The ICR document, referred to as the Opt-out and Recordkeeping Proposed Rule ICR Addendum and identified under EPA ICR No. 1715.11 and OMB Control Number 2070–0155, has been placed in the docket for this proposed rule (Ref. 7). The information collection requirements are not enforceable until OMB approves them.

Burden under PRA means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The information collection activities contained in this proposed rule are designed to assist the Agency in meeting the core objectives of TSCA section 402. EPA has carefully tailored the recordkeeping requirements so they will permit the Agency to achieve statutory objectives without imposing an undue burden on those firms that choose to be involved in renovation, repair, and painting activities.

The information collection requirements under this proposed rule may affect training providers as well as firms that perform renovation, repair, or painting for compensation. Removing the opt-out provision may cause additional renovators to become trained and firms to become certified, and there are paperwork requirements for both of these activities. Removing the opt-out provision will also create paperwork due to the requirement to maintain records documenting compliance with the training and work practice requirements. This proposed rule also requires renovation firms to provide owners and occupants with these records. Although firms have the option of choosing to engage in the covered activities, once a firm chooses to do so, the information collection activities become mandatory for that firm.

The ICR document provides a detailed presentation of the estimated paperwork burden and costs resulting from this proposed rule. The burden to training providers and firms engaged in renovation, repair, and painting activities is summarized in this unit.

Because this analysis assumes that renovation firms are somewhat specialized in terms of whether they work in facilities where the RRP rule requirements are applicable, removing the opt-out provision is estimated to result in additional renovators becoming trained and additional renovation firms becoming certified. Training additional renovators will increase the paperwork burden for training providers, since they must submit records to EPA (or an authorizing State, Tribe, or Territory) pertaining to each student attending a training course. Approximately 170 training providers are estimated to incur an average burden of about 40 hours each for additional notifications, resulting in an increase in training provider burden averaging 7,000 hours per year as a result of the removal of the opt-out provision.

Removing the opt-out provision is estimated to result in up to 111,000 additional firms becoming certified to engage in renovation, repair, or painting activities. The average certification burden is estimated to be 3.5 hours per firm in the year a firm is initially certified, and 0.5 hours in years that it is re-certified (which occurs every 5 years). Firms must keep records of the work they perform; this recordkeeping is estimated to average approximately 5 hours per year per firm. And under this proposed rule, firms must also provide a copy of the records demonstrating compliance with the training and work practice requirements of the RRP rule to the owners and occupants of buildings being renovated. This additional recordkeeping requirement is estimated to average approximately 3.3 hours per year per firm. The total annual burden for these 111,000 firms is estimated to average 1,072,000 hours, of which 362,000 hours is due to the recordkeeping requirement to provide owners and occupants with documentation of the training and work practices used.

To the extent that firms working in housing eligible for the opt-out provision will already have incurred the training and certification burdens because they also work in regulated facilities ineligible for the opt-out provision, the training and certification burden for this action will be lower than estimated.

The requirement that firms provide owners and occupants with a copy of the records demonstrating compliance with the training and work practice requirements of the RRP rule also applies to firms working in buildings that were not eligible for the opt-out

provision. There are an estimated 211,000 such firms with an average annual burden of approximately 2.7 hours per firm, resulting in a total burden of 568,000 hours per year for these firms.

Total respondent burden for training providers and certified firms from removing the opt-out provision and requiring additional recordkeeping is estimated to average approximately 1,647,000 hours per year during the 3 year period covered by the ICR.

The proposed rule may also result in additional government costs to administer the program (to process the additional training provider notifications and to administer and enforce the program for firms working in housing previously eligible for the opt-out provision). States, Tribes, and Territories are allowed, but are under no obligation, to apply for and receive authorization to administer these requirements. EPA will directly administer programs for States, Tribes, and Territories that do not become authorized. Because the number of States, Tribes, and Territories that will become authorized is not known, administrative costs are estimated assuming that EPA will administer the program everywhere. To the extent that other government entities become authorized, EPA's administrative costs will be lower.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations codified in chapter I of title 40 of the CFR, after appearing in the preamble of the final rule, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. When the ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in the final rule.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a docket for this proposed rule, which includes this ICR, under docket ID number EPA–HQ–OPPT–2005–0049. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after October 28, 2009, a comment to OMB is best assured of having its full effect if OMB receives it by November 27, 2009. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposed rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined in accordance with section 601 of RFA as:

1. A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201.

2. A small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000.

3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

As required by section 603 of RFA, EPA has prepared an initial regulatory flexibility analysis (IRFA) for this proposed rule. The IRFA is available for review in the docket and is summarized in this unit (Ref. 8).

1. *Reasons why action by the Agency is being considered.* After further consideration of the opt-out provision, the Agency believes it is in the best interest of the public to remove the provision. EPA believes that the opt-out provision is not sufficiently protective for children under age 6 and pregnant women, because it does not provide protection from improperly performed renovations for visiting children and pregnant women; for children and pregnant women who move into a newly purchased house that was recently renovated under the opt-out provision; and for children and pregnant women who live adjacent to a home where the exterior is being renovated under the opt-out provision. In addition, while the RRP rule focused mainly on protecting young children and pregnant women from lead hazards, exposure can result in adverse health effects for older children and adults as well. Removing the opt-out provision will protect older children and adult occupants of target housing where no child under age 6 or pregnant woman resides, as well as residents of adjacent properties. Finally, EPA believes that implementing the regulations without the opt-out provision promotes, to a greater extent, the statutory directive to promulgate regulations covering renovation activities in target housing.

EPA has determined that providing owners and occupants of renovated buildings with copies of the records documenting the renovation firm's compliance with the RRP rule's training and work practice requirements will serve to reinforce information on both the potential hazards of renovations and on the RRP rule's requirements. It will also enable building owners and occupants to better understand what the renovation firm did to comply with the RRP rule and how the rule's provisions affected their specific renovation. Educating the owners and occupants in this way is likely to improve their ability to assist the EPA in monitoring compliance with the RRP rule. These improvements in education and monitoring will improve compliance with the RRP rule, which will ultimately protect children and adults from exposure to lead hazards due to renovation activities.

2. *Legal basis and objectives for this proposed rule.* TSCA section 402(c)(2) directs EPA to study the extent to which persons engaged in renovation, repair, and painting activities are exposed to lead or create lead-based paint hazards regularly or occasionally. After concluding this study, TSCA section 402(c)(3) further directs EPA to revise its lead-based paint activities regulations under TSCA section 402(a) to apply to renovation or remodeling activities that create lead-based paint hazards. Because EPA's study found that activities commonly performed during renovation and remodeling create lead-based paint hazards, EPA issued the RRP rule in 2008 (Ref. 1). In issuing the RRP rule, EPA revised the TSCA section 402(a) regulatory scheme to apply to individuals and firms engaged in renovation, repair, and painting activities. In this proposed rule, EPA is revising the TSCA section 402(c)(3) rule to cover renovations in all target housing and child-occupied facilities. In so doing, EPA has also taken into consideration the environmental, economic, and social impact of this proposed rule as provided in TSCA section 2(c). A central objective

of this proposed rule is to minimize exposure to lead-based paint hazards created during renovation, repair, and painting activities in all target housing and other buildings frequented by children under age 6.

3. *Potentially affected small entities.* Small entities include small businesses, small organizations, and small governmental jurisdictions. The small entities that are potentially directly regulated by this proposed rule include: Small businesses (including contractors and property owners and managers); small nonprofits (certain childcare centers and private schools); and small governments (school districts which operate pre-schools, kindergartens and certain child care centers).

In determining the number of small businesses affected by the proposed rule, the Agency applied U.S. Economic Census data to the SBA's definition of small business. However, applying the U.S. Economic Census data requires either under or overestimating the number of small businesses affected by the proposed rule. For example, for many construction establishments, the SBA defines small businesses as having revenues of less than $14 million. With respect to those establishments, the U.S. Economic Census data groups all establishments with revenues of $10 million or more into one revenue bracket. On the one hand, using data for the entire industry would overestimate the number of small businesses affected by the proposed rule and would defeat the purpose of estimating impacts on small business. It would also underestimate the proposed rule's impact on small businesses because the impacts would be calculated using the revenues of large businesses in addition to small businesses. On the other hand, applying the closest, albeit lower, revenue bracket would underestimate the number of small businesses affected by the proposed rule while at the same time overestimating the impacts. Similar issues arose in estimating the fraction of property owners and managers that are small businesses. EPA has concluded that a substantial number of small businesses will be affected by the rule. Consequently, EPA has chosen to be more conservative in estimating the cost impacts of the rule by using the closest, albeit lower, revenue bracket for which U.S. Economic Census data is available. For other sectors (nonprofits operating childcare centers or private schools), EPA assumed that all affected firms are small, which may overestimate the number of small entities affected by the proposed rule.

The vast majority of entities in the industries affected by this proposed rule are small. Using EPA's estimates, the revisions to the renovation, repair, and painting program will affect approximately 289,000 small entities.

4. *Potential economic impacts on small entities.* EPA evaluated two factors in its analysis of the proposed rule's requirements on small entities, the number of firms that would experience the impact, and the size of the impact. Average annual compliance costs as a percentage of average annual revenues were used to assess the potential average impacts of the rule on small businesses and small governments. This ratio is a good measure of entities' ability to afford the costs attributable to a regulatory requirement, because comparing compliance costs to revenues provides a reasonable indication of the magnitude of the regulatory burden relative to a commonly available measure of economic activity. Where regulatory costs represent a small fraction of a typical entity's revenues, the financial impacts of the regulation on such entities may be considered as not significant. For non-profit organizations, impacts were measured by comparing rule costs to annual expenditures. When expenditure data were not available, however, revenue information was used as a proxy for expenditures. It is appropriate to calculate the impact ratios using annualized costs, because these costs are more representative of the continuing costs entities face to comply with the proposed rule.

Of the approximately 289,000 small entities estimated to incur costs due to the proposed rule, an estimated 101,000 small residential contractors are assumed to seek certification as a result of the removal of the opt-out provision; therefore, they would incur training, certification, work practice, and recordkeeping costs. The remaining estimated 189,000 small entities (working in buildings that were not eligible for the opt-out) are only expected to incur costs due to the additional recordkeeping provisions in the proposed rule.

The average cost to a typical small renovation contractor of removing the opt-out provision ranges from about $1,100 to about $6,400, depending on the industry sector. This represents 0.8% to 1.7% of revenues depending on the industry sector. Overall, an estimated 101,000 small businesses would be affected by the removal of the opt-out provision, with average impacts of 1.10%of revenues.

This proposed rule's new recordkeeping requirement has an average cost of $1 to $280 for entities not affected by removal of the opt-out provision. This results in incremental cost impacts ranging from 0.0001% to 0.08% of revenues. An estimated 189,000 small entities would be affected solely by the additional recordkeeping requirement, including 165,000 small businesses with average impacts of 0.03% of revenues, 17,000 small non-profits with average impacts of 0.0005%, and 6,000 small governments with average impacts of 0.0001%.

Combining the removal of the opt-out provision with the new recordkeeping requirement, a total of 289,000 small entities would be affected by the proposed rule, including 266,000 small businesses with average impacts of 0.4%, 17,000 small non-profits with average impacts of 0.0005%, and 6,000 small governments with average impacts of 0.0001%.

To the extent that renovators and firms working in housing eligible for the opt-out provision will already have become trained and certified because they also work in regulated facilities ineligible for the opt-out provision, or to the extent that eligible homeowners would decline to opt out, the average impacts of this action will be lower than estimated.

Some of the small entities subject to the rule have employees while others are non-employers. The non-employers typically perform fewer jobs than firms with employees, and thus have lower work practice compliance costs. However, they also have lower average revenues than entities with employees, so their impacts (measured as costs divided by revenues) can be higher. Impact estimates for non-employers should be interpreted with caution, as some non-employers may have significant issues related to understatement of income, which would tend to exaggerate the average impact ratio for this class of small entities.

There are 75,000 non-employer renovation contractors estimated to be affected by the removal of the opt-out provision. The average cost to these contractors is estimated to be $1,193 apiece. This represents 1.3% to 4.7% of reported revenues, depending on the industry sector. This proposed rule's new recordkeeping requirement is estimated to affect an additional 96,000 non-employer renovation contractors not affected by removal of the opt-out provision. The costs to these contractors are estimated to be $42 apiece. This represents 0.05% to 0.17% of revenues, depending on the industry sector.

5. *Relevant Federal rules.* The requirements in this proposed rule will fit within an existing framework of other Federal regulations that address lead-based paint. Notably, the Pre-

Renovation Education Rule, 40 CFR 745.85, requires renovators to distribute a lead hazard information pamphlet to owners and occupants before conducting a renovation in target housing and child-occupied facilities. This proposed rule's requirement that renovators provide owners and occupants with records documenting compliance with the program's training and work practice requirements complements the existing pre-renovation education requirements.

6. *Skills needed for compliance.* Under the lead renovation, repair, and painting program requirements, renovators and dust sampling technicians working in target housing and child-occupied facilities have to take a course to learn the proper techniques for accomplishing the tasks they will perform during renovations. These courses are intended to provide them with the information they would need to comply with the rule based on the skills they already have. Renovators then provide on-the-job training in work practices to any other renovation workers used on a particular renovation. Entities are required to apply for certification to perform renovations; this process does not require any special skills other than the ability to complete the application. They also need to document their training and the work practices used during renovations. This does not require any special skills.

7. *Small Business Advocacy Review Panel.* EPA has been concerned with potential small entity impacts since the earliest stages of planning for the RRP program under section 402(c)(3) of TSCA. EPA conducted outreach to small entities and, pursuant to section 609 of RFA, convened a Small Business Advocacy Review Panel (the Panel) in 1999 to obtain advice and recommendations of representatives of the regulated small entities. EPA identified eight key elements of a potential renovation and remodeling regulation for the Panel's consideration. These elements were: Applicability and scope, firm certification, individual training and certification, accreditation of training courses, work practice standards, prohibited practices, exterior clearance, and interior clearance.

Details on the Panel and its recommendations are provided in the Panel Report (Ref. 9). Information on how EPA implemented the Panel's recommendations in the development of the RRP program is available in Unit VIII.C. of the preamble to the proposed RRP rule (Ref. 10) and in Unit V.C. of the preamble to the RRP rule (Ref. 1). EPA believes that the conclusions it made in 2008 regarding these recommendations are applicable to this proposal, particularly with respect to the removal of the opt-out provision.

8. *Alternatives considered.* EPA considered several significant alternatives to this proposed rule that could affect the economic impacts of the proposed rule on small entities. These alternatives would have applied to both small and large entities, but given the number of small entities in the affected industries, these alternatives would primarily affect small entities. For the reasons described in this unit, EPA believes these alternatives are not consistent with the objectives of the rule.

i. *Delayed effective date.* EPA considered an option that would delay the removal of the opt-out provision by 6 months, and another option that would delay the date by 12 months. These options would make the RRP program more complex to implement and might lead to confusion by renovators and homeowners. These options would also lead to increased exposures during the delay period, including exposures to children under the age of 6 and pregnant women. Therefore, EPA believes that these options are not consistent with the stated objectives of the proposed rule.

ii. *Staged approach.* EPA considered a staged approach that would initially remove the opt-out provision in pre-1960 housing, and then remove it in housing built between 1960 and 1978 a year later. This would make the RRP program more complex to implement and might lead to confusion by renovators and homeowners. It would also increase exposures during the first year of the rule from renovations in houses built between 1960 and 1978, including exposures to children under the age of 6 and pregnant women. EPA does not believe that the reduced burden of a staged approach outweighs the implementation complexity and additional exposures that it would create. Therefore, EPA believes that this option is not consistent with the stated objectives of the rule.

iii. *Alternate work practices.* EPA also considered different options for the work practice requirements in housing that was previously eligible for the opt-out provision. Specifically, EPA considered options: With the containment requirements specified in 40 CFR 745.85, but without any cleaning or cleaning verification work practices; with the cleaning and cleaning verification requirements specified in 40 CFR 745.85, but without any containment work practices; with the cleaning requirements specified in 40 CFR 745.85, but without any containment or cleaning verification work practices; and with the containment, cleaning, and cleaning verification requirements specified in 40 CFR 745.85, but without the prohibitions or restrictions on paint removal practices specified in 40 CFR 745.85(a)(3) (i.e., open-flame burning or torching, the use of machines that remove paint through high-speed operation without HEPA exhaust control, and heat guns operating in excess of 1,100 degrees Fahrenheit).

EPA's Dust Study (Ref. 11) indicated that renovation, repair, and paint preparation activities produce large quantities of lead dust that create dust-lead hazards. The Dust Study showed that the largest decreases in dust levels were observed in the experiments where the rule's practices of containment, specialized cleaning, and cleaning verification were all used. The Dust Study indicated that if the prohibited and restricted practices are avoided, the suite of work practices as a whole are effective at addressing the lead-paint dust that is generated during renovation activities. This is discussed in more detail in the RRP rule (Ref. 1, pp. 21696–21697).

As required by section 212 of Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA issued a Small Entity Compliance Guide (the Guide) in December 2008 to help small entities comply with the RRP rule. The Guide is available at: *http://www.epa.gov/lead/pubs/sbcomplianceguide.pdf* or from the National Lead Information Center by calling 1–800–424–LEAD [5323]. Hearing- or speech-challenged individuals may access this number through TTY by calling the toll-free Federal Relay Service at 1–800–877–8339. EPA will revise the Guide, as necessary, to reflect this rulemaking activity.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires

EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA proposal rules with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Under UMRA Title II, EPA has determined that this proposed rule contains a Federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of $100 million by the private sector in any 1 year, but it will not result in such expenditures by State, local, and Tribal governments in the aggregate. Accordingly, EPA has prepared a written statement under section 202 of UMRA which has been placed in the docket for this proposed rule (Ref. 12) and is summarized here.

1. *Authorizing legislation*. This proposed rule is issued under the authority of TSCA sections 402(c)(3), 404, 406, and 407 (15 U.S.C. 2682(c)(3), 2684, 2686, and 2687).

2. *Cost-benefit analysis*. EPA has prepared an analysis of the costs and benefits associated with this proposed rule, a copy of which is available in the docket for this proposed rule (Ref. 5). The Economic Analysis presents the costs of this proposed rule as well as various regulatory options and is summarized in Unit IV.A. EPA has estimated the total costs of this proposed rule at $500 million in the first year and $300 million per year thereafter.

The benefits of the proposed rule result from the prevention of adverse health effects attributable to lead exposure from renovations in pre-1978 buildings. These health effects include impaired cognitive function in children and several illnesses in children and adults, such as increased adverse cardiovascular outcomes (including increased blood pressure, increased incidence of hypertension, cardiovascular morbidity, and mortality) and decreased kidney function.

3. *State, local, and Tribal government input*. EPA has sought input from State, local, and Tribal government representatives throughout the development of the renovation, repair, and painting program. EPA's experience in administering the existing lead-based paint activities program under TSCA section 402(a) suggests that these governments will play a critical role in the successful implementation of a national program to reduce exposures to lead-based paint hazards associated with renovation, repair, and painting activities. Consequently, as discussed in Unit III.C.2. of the preamble to the proposed RRP rule (Ref. 10), the Agency has met with State, local, and Tribal government officials on numerous occasions to discuss renovation issues.

4. *Least burdensome option*. EPA has considered a wide variety of options for addressing the risks presented by renovation activities where lead-based paint is present. As part of the development of the renovation, repair, and painting program, EPA considered different options for the scope of the proposed rule, various combinations of training and certification requirements for individuals who perform renovations, various combinations of work practice requirements, and various methods for ensuring that no lead-based paint hazards are left behind by persons performing renovations. The Economic Analysis for this proposed rule analyzed several additional options for the phasing, effective date, and work practices required for the additional owner-occupied housing affected by the removal of the opt-out provision. As described in Unit IV.C., EPA has preliminarily concluded that the options for delaying or phasing the effective date would make the RRP program more complex to implement, might lead to confusion by renovators and homeowners, and would lead to increased exposures. Currently EPA believes that the preferred option is the least burdensome option available that achieves a central objective of this proposed rule, which is to minimize exposure to lead-based paint hazards created during renovation, repair, and painting activities in all target housing and other buildings frequented by children under age 6.

This proposed rule does not contain a significant Federal intergovernmental mandate as described by section 203 of UMRA. Based on the definition of ''small government jurisdiction'' in RFA section 601, no State governments can be considered small. Small Territorial or Tribal governments may apply for authorization to administer and enforce this program, which would entail costs, but these small jurisdictions are under no obligation to do so.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments operate public housing, and schools that are child-occupied facilities. If these governments perform renovations in these facilities, they may incur very small additional costs to provide residents, parents or guardians with copies of the records documenting compliance with the training and work practice requirements. EPA generally measures a significant impact under UMRA as being expenditures, in the aggregate, of more than 1% of small government revenues in any 1 year. As explained in Unit IV.C.4., the proposed rule is expected to result in small government impacts well under 1% of revenues. So EPA has determined that the rule does not significantly affect small governments. Nor does the rule uniquely affect small governments, as the proposed rule is not targeted at small governments, does not primarily affect small governments, and does not impose a different burden on small governments than on other entities that operate child-occupied facilities.

E. Executive Order 13132

Pursuant to Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), EPA has determined that this proposed rule does not have ''federalism implications,'' because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this proposed rule. States are able to apply for, and receive authorization to administer the lead renovation, repair, and painting program requirements, but are under no obligation to do so. In the absence of a State authorization, EPA will administer the requirements. Nevertheless, in the spirit of the objectives of this Executive Order, and consistent with EPA policy to promote communications between the Agency and State and local governments, EPA consulted with representatives of State and local

governments in developing the renovation, repair, and painting program. These consultations were described in the preamble to the proposed RRP rule (Ref. 10).

F. Executive Order 13175

As required by Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (59 FR 22951, November 6, 2000), EPA has determined that this proposed rule does not have Tribal implications because it will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in the Order. Tribes are able to apply for and receive authorization to administer the lead renovation, repair, and painting program on Tribal lands, but Tribes are under no obligation to do so. In the absence of a Tribal authorization, EPA will administer these requirements. While Tribes may operate public housing or child-occupied facilities covered by the rule such as kindergartens, pre-kindergartens, and daycare facilities, EPA has determined that this rule would not have substantial direct effects on the Tribal governments that operate these facilities.

Thus, Executive Order 13175 does not apply to this proposed rule. Although Executive Order 13175 does not apply, EPA consulted with Tribal officials and others by discussing potential renovation regulatory options for the renovation, repair, and painting program at several national lead program meetings hosted by EPA and other interested Federal agencies.

G. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to this proposed rule because it is an ''economically significant regulatory action'' as defined by Executive Order 12866, and because the environmental health or safety risk addressed by this action may have a disproportionate effect on children.

A central purpose of this proposed rule is to minimize exposure to lead-based paint hazards created during renovation, repair, and painting activities in all housing and other buildings frequented by children under age 6. In the absence of this regulation, adequate work practices are not likely to be employed during renovation, repair, and painting activities in housing eligible for the opt-out provision.

Removing the opt-out provision will protect children under the age of 6 who visit a friend, relative, or caregiver's house where a renovation would have been performed under the opt-out provision; children who move into such housing when their family purchases it after such a renovation would have been performed; and children who live in a property adjacent to owner-occupied housing where renovation would have been performed under the opt-out provision. Removing the opt-out provision will also protect children age 6 and older who live in houses that would have been renovated under the opt-out provision; who move into such housing; and who live in adjacent properties.

H. Executive Order 13211

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, entitled ''Actions concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have any adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898

Pursuant to Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994), EPA has assessed the potential impact of this rule on minority and low-income populations. The results of this assessment are presented in the Economic Analysis, which is available in the public docket for this rulemaking (Ref. 5). As a result of this assessment, the Agency has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

List of Subjects in 40 CFR Part 745

Environmental protection, Lead, Lead-based paint, Renovation, Reporting and recordkeeping requirements.

Dated: October 20, 2009.

Lisa P. Jackson,

Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

1. The authority citation for part 745 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2681–2692 and 42 U.S.C. 4852d.

2. Section 745.81 is amended by revising paragraph (a)(4) to read as follows:

§ 745.81 Effective dates.

(a) * * *

(4) *Work practices.* On or after April 22, 2010, all renovations must be performed in accordance with the work practice standards in § 745.85 and the associated recordkeeping requirements in § 745.86(b)(1) and (b)(6) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82(a).

* * * * *

§ 745.82 [Amended]

3. Section 745.82 is amended by removing paragraph (c).

4. Section 745.84 is amended by revising paragraphs (b)(2), (c)(2) introductory text, and (c)(2)(ii) to read as follows:

§ 745.84 Information distribution requirements.

* * * * *

(b) * * *

(2) *Comply with one of the following.* (i) Notify in writing, or ensure written notification of, each affected unit and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe

the general nature and locations of the planned renovation activities; the expected starting and ending dates; and a statement of how the occupant can obtain the pamphlet and a copy of the records required by § 745.86(c) and (d), at no cost to the occupants, or

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they are likely to be seen by the occupants of all of the affected units. The signs must be accompanied by a posted copy of the pamphlet or information on how interested occupants can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to occupants. The signs must also include information on how interested occupants can review a copy of the records required by § 745.86(c) and (d) or obtain a copy from the renovation firm at no cost to the occupants.

* * * * *

(c) * * *

(2) Provide the parents and guardians of children using the child-occupied facility with the pamphlet, information describing the general nature and locations of the renovation and the anticipated completion date, and information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by § 745.86(c) and (d) or obtain a copy from the renovation firm at no cost to the occupants by complying with one of the following:

* * * * *

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians. The signs must also include information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by § 745.86(c) and (d) or obtain a copy from the renovation firm at no cost to the parents or guardians.

* * * * *

5. Section 745.86 is amended by removing paragraph (b)(6) and redesignating paragraph (b)(7) as paragraph (b)(6) and by revising paragraphs (b)(1), (c), and (d) to read as follows:

§ 745.86 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(1) Records or reports certifying that a determination had been made that lead-based paint was not present on the components affected by the renovation, as described in § 745.82(a). These records or reports include:

(i) Reports prepared by a certified inspector or certified risk assessor (certified pursuant to either Federal regulations at § 745.226 or an EPA-authorized State or Tribal certification program).

(ii) Records prepared by a certified renovator after using EPA-recognized test kits, including an identification of the manufacturer and model of any test kits used, a description of the components that were tested including their locations, and the result of each test kit used.

* * * * *

(c)(1) When the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, the renovation firm must provide information pertaining to compliance with this subpart to the following persons:

(i) The owner of the building; and, if different,

(ii) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(2) When performing renovations in common areas of multi-unit target housing, renovation firms must post the information required by this subpart or instructions on how interested occupants can obtain a copy of this information. This information must be posted in areas where it is likely to be seen by the occupants of all of the affected units.

(3) The information required to be provided by paragraph (c) of this section may be provided by completing the sample form titled ''Sample Renovation Recordkeeping Checklist'' or a similar form containing the test kit information required by § 745.86(b)(1)(ii) and the training and work practice compliance information required by § 745.86(b)(6).

(d) If dust clearance sampling is performed in lieu of cleaning verification as permitted by § 745.85(c), the renovation firm must provide, when the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, a copy of the dust sampling report to:

(1) The owner of the building; and, if different,

(2) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(3) When performing renovations in common areas of multi-unit target housing, renovation firms must post these dust sampling reports or information on how interested occupants of the housing being renovated can obtain a copy of the report. This information must be posted in areas where they are likely to be seen by the occupants of all of the affected units.

6. Section 745.90 is amended by revising paragraph (b)(8) to read as follows:

§ 745.90 Renovator certification and dust sampling technician certification.

* * * * *

(b) * * *

(8) Must prepare the records required by § 745.86(b)(1) and (6).

* * * * *

7. Section 745.326 is amended by adding paragraph (f) to read as follows:

§ 745.326 Renovation: State and Tribal program requirements.

* * * * *

(f) *Revisions to renovation program requirements.* When EPA publishes in the **Federal Register** revisions to the renovation program requirements contained in subparts E and L of this part:

(1) A State or Tribe with a renovation program approved before the effective date of the revisions to the renovation program requirements in subparts E and L of this part must demonstrate that it meets the requirements of this section no later than the first report that it submits pursuant to § 745.324(h) but no later than 1 year after the effective date of the revisions.

(2) A State or Tribe with an application for approval of a renovation program submitted but not approved before the effective date of the revisions to the renovation program requirements in subparts E and L of this part must demonstrate that it meets the requirements of this section either by amending its application or in the first report that it submits pursuant to

§ 745.324(h) of this part but no later than 1 year after the effective date of the revisions.

(3) A State or Tribe submitting its application for approval of a renovation program on or after the effective date of the revisions must demonstrate in its application that it meets the requirements of the new renovation program requirements in subparts E and L of this part.

[FR Doc. E9–25986 Filed 10–23–09; 4:15 pm]
BILLING CODE 6560–50–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R6-ES-2009-0065]
[MO 9221050083-B2]

Endangered and Threatened Wildlife and Plants; Status Review of Arctic Grayling (*Thymallus arcticus*) in the Upper Missouri River System

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to conduct status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), under the authority of the Endangered Species Act of 1973, as amended (Act), give notice of our intent to conduct a status review of Arctic grayling (*Thymallus arcticus*) in the upper Missouri River system. We conduct status reviews to determine whether the entity should be listed as endangered or threatened under the Act. Through this notice, we encourage all interested parties to provide us information regarding Arctic grayling in the upper Missouri River basin.

DATES: We must receive information no later than November 27, 2009.

ADDRESSES: You may submit information by one of the following methods:

• Via e-mail to:
fw6_arcticgrayling@fws.gov

• U.S. mail or hand-delivery: Arctic Grayling Status Review, U.S. Fish and Wildlife Service, Montana Field Office, 585 Shepard Way, Helena, Montana 59601.

We will not accept faxes.

FOR FURTHER INFORMATION CONTACT: Mark Wilson, Montana Field Office; telephone (406) 449-5225. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Request for Information

To ensure that the status review is based on the best available scientific and commercial information and to provide an opportunity to any interested parties to provide information for consideration during the status assessment, we are requesting information concerning Arctic grayling in the upper Missouri River system. We request information be provided within 30 days. We request information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, and any other interested party. We are seeking:

(1) General information concerning the taxonomy, biology, ecology, genetics, and status of the Arctic grayling of the upper Missouri River system;

(2) Specific information relevant to the consideration of the potential distinct population segment (DPS) status of Arctic grayling in the upper Missouri River system in accordance with our Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722, February 7, 1996) (known as the DPS Policy), which specifically considers two elements: (i) discreteness of the population segment in relation to the remainder of the species to which it belongs; and (ii) the significance of the population segment to the species to which it belongs. Per our recent settlement, we will consider various DPS designations that include different life histories of Arctic grayling in the upper Missouri River system. Specifically, we may consider DPS configurations that include the fluvial (relating to, or inhabiting, a river or stream) and/or adfluvial (fish that live in lakes and migrate into streams to spawn) Arctic grayling in the upper Missouri River system;

(3) Specific information on the conservation status of Arctic grayling in the upper Missouri River system, including information on distribution, abundance, and population trends;

(4) Specific information on threats to Arctic grayling in the upper Missouri River, including: (i) the present or threatened destruction, modification, or curtailment of its habitat or range; (ii) overutilization for commercial, recreational, scientific, or educational purposes; (iii) disease or predation; (iv) the inadequacy of existing regulatory mechanisms; and (v) other natural or manmade factors affecting its continued existence; and

(5) Specific information on conservation actions designed to improve Arctic grayling habitat or reduce threats to grayling in the upper Missouri River system.

If you submit information, we request you support it with documentation such as data, maps, bibliographic references, methods used to gather and analyze the data, or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so.

Information and supporting documentation that we receive and use in preparing this finding will be available for you to review by appointment during normal business hours at the U.S. Fish and Wildlife Service, Montana Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

The Arctic grayling is a fish belonging to the family Salmonidae (salmon, trout, charr, whitefishes), subfamily *Thymallinae* (graylings), and is represented by a single genus, *Thymallus* (Scott and Crossman 1973, pp. 301–302; Behnke 2002, pp. 327–331). Arctic grayling have long, thin bodies with deeply forked tails, and adults typically average 254 to 330 millimeters (10 to 13 inches) in length. Coloration varies from silvery or iridescent blue and lavender, to dark blue (Behnke 2002, pp. 327–328). Arctic grayling have a prominent sail-like dorsal fin, which is large and vividly colored with rows of orange to bright green spots, and often has an orange border. Dark spots often appear on the body toward the head (Behnke 2002, pp. 327–328).

Arctic grayling are native to Arctic Ocean drainages of northwestern Canada and Alaska; the Peace, Saskatchewan, and Athabasca River drainages in Alberta, eastward to Hudson Bay and westward to the Bering Straits; and eastern Siberia and northern Eurasia (Scott and Crossman 1973, pp. 301–302). Arctic grayling also are native to Pacific coast drainages of Alaska and Canada as far south as the Stikine River in British Columbia (Scott and

Crossman 1973, pp. 301–302; Nelson and Paetz 1991, pp. 253–256; Behnke 2002, pp. 327–331).

Pleistocene glaciations isolated two North American populations of Arctic grayling outside of Canada and Alaska (Vincent 1962, pp. 23–31). One population occurred in streams and rivers of the Great Lakes region of northern Michigan, but was extirpated in the 1930s (Hubbs and Lagler 1949, p. 44; Scott and Crossman 1973, p. 301). The second population (Arctic grayling of the upper Missouri River) inhabits watersheds in the upper Missouri River basin upstream of Great Falls, Montana. This population is the subject of our status review.

Previous Federal Actions

We have published a number of documents on Arctic grayling, and we describe our actions relevant to this notice below:

We initiated a status review for the Montana Arctic grayling (*Thymallus arcticus montanus*) in a **Federal Register** notice on December 30, 1982 (47 FR 58454). In that notice, we designated the purported subspecies Montana Arctic grayling as a Category 2 species. At that time, we designated a species as Category 2 if a listing as endangered or threatened was possibly appropriate, but we did not have sufficient data to support a proposed rule to list the species.

On October 9, 1991, the Biodiversity Legal Foundation and George Wuerthner petitioned us to list the fluvial Arctic grayling in the upper Missouri River basin as an endangered species throughout its historical range in the coterminous United States.

We published a notice of a 90–day finding in the January 19, 1993, **Federal Register** (58 FR 4975), concluding the petitioners presented substantial information indicating that listing the fluvial Arctic grayling of the upper Missouri River in Montana and northwestern Wyoming may be warranted. This finding noted that taxonomic recognition of the Montana Arctic grayling (*Thymallus arcticus montanus*) as a subspecies (previously designated as a category 2 species) was not widely accepted and that the scientific community generally considered this population a geographically isolated member of the wider species (*T. arcticus).*

On July 25, 1994, we published a notice of a 12–month finding in the **Federal Register** (59 FR 37738) concluding that listing the DPS of fluvial Arctic grayling in the upper Missouri River was warranted but precluded by other higher priority listing actions (it should be noted that this DPS determination predated our DPS policy (61 FR 4722, February 7, 1996), so it did not undergo a formal DPS analysis as required by the policy). This finding placed fluvial Arctic grayling of the upper Missouri River on the candidate list and assigned it a listing priority of 9. On May 4, 2004, we elevated the listing priority number of the fluvial Arctic grayling to 3 (69 FR 24881).

On May 31, 2003, the Center for Biological Diversity and Western Watersheds Project (Plaintiffs) filed a complaint in U.S. District Court in Washington, D.C., challenging our ''warranted but precluded'' determinations. On July 22, 2004, the Plaintiffs amended their complaint to challenge our failure to emergency list this population. We settled with the Plaintiffs in August 2005, and we agreed to submit a final determination on whether this population warranted listing as endangered or threatened to the **Federal Register** on or before April 16, 2007.

On April 24, 2007, we published a revised 12–month finding on the petition to list the upper Missouri River DPS of fluvial Arctic grayling (72 FR 20305). In this finding, we determined that fluvial Arctic grayling of the upper Missouri River did not constitute a species, subspecies, or DPS under the Act. Therefore, we found that the upper Missouri River population of fluvial Arctic grayling was not a listable entity under the Act, and as a result listing was not warranted. With that notice, we withdrew the fluvial Arctic grayling from the candidate list.

On November 15, 2007, the Center for Biological Diversity filed a complaint to challenge our revised 12–month finding. We initiated a voluntary remand of our finding in May 2009. With this notice, we are initiating a new status review for Arctic grayling of the upper Missouri River system. Per our recent settlement, we will consider various DPS designations that include different life histories of Arctic grayling in the upper Missouri River system. Specifically, we may consider DPS configurations that include the fluvial and/or adfluvial Arctic grayling in the upper Missouri River system.

For additional information on the biology or previous Federal actions on grayling, see the April 24, 2007, revised 12–month finding (72 FR 20305).

References Cited

Behnke, R.J. 2002. Trout and salmon of North America. The Free Press, New York.

Hubbs, C.L., and K.F. Lagler. 1949. Fishes of the Great Lakes Region. Cranbrook Institute of Science. Bulletin No. 26, Bloomfield Hills, Michigan.

Nelson, J.S., and M.J. Paetz. 1991. The fishes of Alberta, second edition. University of Alberta Press, Calgary, Alberta, Canada.

Scott, W.B., and E.J. Crossman. 1973. Freshwater fishes of Canada. Fisheries Research Board of Canada, Bulletin 184, Ottawa.

Vincent, R.E. 1962. Biogeographical and ecological factors contributing to the decline of Arctic grayling, *(Thymallus arcticus*), in Michigan and Montana. PhD Dissertation. University of Michigan, Ann Arbor, Michigan. 169 pp.

Author

The primary author of this document is Douglas Peterson, U.S. Fish and Wildlife Service, Montana Field Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 20, 2009

Daniel M. Ashe,

Deputy Director, U.S. Fish and Wildlife Service

[FR Doc. E9–25990 Filed 10–27–09; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R2-ES-2009-0030]
[92210-1111-FY08-B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Northern Leopard Frog (*Lithobates* [=Rana] *pipiens*) in the Western United States as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of a 90–day petition finding; reopening of the information solicitation period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public information solicitation period on our July 1, 2009, initiation of status review and 90–day finding on a petition to list the western U.S. population of the northern leopard frog (*Lithobates* [=Rana] *pipiens*) as threatened under the Endangered Species Act of 1973, as amended (Act). This action will provide all interested

parties with an additional opportunity to submit information and materials on the status of the northern leopard frog. Information previously submitted need not be resubmitted as it has already been incorporated into the public record and will be fully considered in the 12–month finding.

DATES: We are reopening the public information solicitation period. To allow us adequate time to consider and incorporate submitted information into our review, we request that we receive information on or before November 27, 2009.

ADDRESSES: You may submit comments by any of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

• U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R2-ES-2009-0030; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the ''Information Solicited'' section below and in our original notice (74 FR 31389) for more details).

FOR FURTHER INFORMATION CONTACT: Steven L. Spangle, Field Supervisor, by U.S. mail at Arizona Ecological Services Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Drive, Suite 103, Phoenix, AZ 85021; telephone 602-242-0210; facsimile 602-242-2513. Information submitted after November 27, 2009 should be submitted to this address. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

We, the U.S. Fish and Wildlife Service, published a 90–day finding on a petition to list the northern leopard frog as threatened in the **Federal Register** on July 1, 2009 (74 FR 31389). We are continuing to solicit information during this reopened information solicitation period on the status of the northern leopard frog. We request information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the northern leopard frog. We are seeking information regarding:

(1) the historical and current status and distribution of the northern leopard frog, its biology and ecology, and ongoing conservation measures for the species and its habitat, and threats to the species and its habitat;

(2) information relevant to the factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(a) the present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) overutilization for commercial, recreational, scientific, or educational purposes;

(c) disease or predation;

(d) the inadequacy of existing regulatory mechanisms; or

(e) other natural or manmade factors affecting its continued existence and threats to the species or its habitat; and

(3) its taxonomy (particularly genetics of the western U.S. population and of the convergence zone of the eastern and western haplotypes in Wisconsin and Ontario, Canada).

If you submitted information previously on the status of this species please do not resubmit it. This information has been incorporated into the public record and will be fully considered in the preparation of the 12–month finding. We will consider information received from all interested parties.

You may submit your information and materials concerning the 90–day finding by any of the methods listed in the **ADDRESSES** section. Be aware that if you submit information via *http://www.regulations.gov* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will also post all hardcopy submissions on *http://www.regulations.gov*. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Information and materials we receive, as well as supporting documentation we used in preparing the 90–day finding for the northern leopard frog, will be available for public inspection on *http://www.regulations.gov*, or by appointment during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

On July 1, 2009, we published a 90–day finding on a petition to list the western U.S. population of the northern leopard frog as threatened (74 FR 31389). In that 90–day finding, we found that the petition presented substantial scientific or commercial information indicating that listing the western U.S. population of the northern leopard frog may be warranted. We also initiated a status review to determine if listing the species is warranted, and announced a 60–day public information solicitation period on the petition finding and status review, which ended on August 31, 2009.

We received multiple requests for an extension of the information solicitation period in order to allow agencies, tribes, and other interested persons the opportunity to provide additional information for our consideration during this status review. The broad geographical distribution of the western U.S. population of the northern leopard frog complicated the timely notification of interested parties. Collection of information from across the full range of the petitioned northern leopard frog population will be important for the status review and 12–month finding on the northern leopard frog.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 20, 2009

Daniel M. Ashe,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. E9–25883 Filed 10–27–09; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 0906221072–91133–01]

RIN 0648–AX95

Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would adjust quotas and opening dates for the 2010 fishing season for sandbar sharks, non-sandbar large coastal sharks (LCS), small coastal sharks (SCS), and pelagic sharks based on any over- and/or underharvests experienced during the 2008 and 2009 Atlantic commercial shark fishing seasons. The purpose of this proposed action is to provide advance notice of quotas and opening dates for the Atlantic commercial shark fishery and address any over- and/or underharvests that may have occurred in the Atlantic shark fishery during the 2008 and 2009 fishing seasons.

DATES: Written comments will be accepted until November 27, 2009. NMFS will hold three public hearings on this proposed rule on November 16 in Manteo, NC, November 18 in Belle Chasse, LA, and November 23 in Jupiter, FL to receive comments from fishery participants and other members of the public regarding this proposed rule.

ADDRESSES: The public hearings will be held at 407 Budleigh Street, Manteo, NC; 8398 Highway 23, Belle Chasse, LA; and 705 Military Trail, Jupiter, FL. You may submit comments, identified by 0648–AX95, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- Fax: 301–713–1917, Attn: Karyl Brewster-Geisz or Guy DuBeck
- Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope ''Comments on Proposed Rule for 2010 Atlantic Commercial Shark Fishing Season.''

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz or Guy DuBeck by phone: 301–713–2347, or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated HMS FMP and its amendments under the Magnuson-Stevens Act are implemented via regulations at 50 CFR part 635.

On June 24, 2008, NMFS published a final rule (73 FR 35778, corrected at 73 FR 40658, July 15, 2008) implementing Amendment 2 to the 2006 Consolidated HMS FMP. That final rule established the annual quotas for all Atlantic shark fisheries and also established adjusted base annual quotas for non-sandbar LCS and sandbar sharks through December 31, 2012, to account for large overharvests that occurred in 2007. That final rule also established accounting measures for under- and overharvests and redefined the regions in the shark fishery.

As a result of that final rule, the Atlantic shark annual quotas and adjusted base annual quotas apply to all areas of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea, with the exception of non-sandbar LCS quota outside of the shark research fishery. The non-sandbar LCS quota outside the research fishery is split between two regions, the Atlantic and Gulf of Mexico. The boundary delineating these two regions is a line beginning on the east coast of Florida, at the mainland, at 25 20.4' N. lat. and proceeding due east. Any water and land to the south and west of that boundary is considered, for the purposes of quota monitoring and setting of quotas, to be within the Gulf of Mexico region. Any water and land to the north and east of that boundary, for the purposes of quota monitoring and setting of quotas, is considered to be within the Atlantic region.

As described below, in addition to establishing quotas, NMFS is also proposing several changes to the start of the 2010 shark fishing season. In Amendment 2 to the 2006 Consolidated HMS FMP, NMFS changed the fishing seasons in part to rebuild overfished shark stocks and prevent overfishing. NMFS originally determined that the reduced retention limits for non-sandbar LCS in Amendment 2 would result in a year-round fishery. A year-round commercial fishery was expected to give the North Atlantic fishery participants opportunity to catch the quota during the summer months when the sharks migrate northward and for all participants to be able to land sharks incidentally year-round as they target species in other fisheries.

In 2009, the commercial shark fishing season opened on January 23, 2009 (73 FR 79005, December 24, 2008), in the Gulf of Mexico (GOM) and the Atlantic regions for SCS, non-sandbar LCS and pelagic sharks. On June 6, 2009, the non-sandbar LCS fishing season closed in the GOM region (74 FR 26803, June 4, 2009) and on July 1, 2009 (74 FR 30479, June 26, 2009), the non-sandbar LCS fishing season closed in the Atlantic region. In the Atlantic region, due to the July 1, 2009, closing of the non-sandbar LCS fishery, the mid-Atlantic shark bottom longline (BLL) closure in Federal waters from January 1 - July 31, the state water closure in Virginia, Maryland, Delaware and New Jersey from May 15 - July 15, and the limited availability of non-sandbar LCS in northern Atlantic waters at the beginning of the year, the fishery participants from North Carolina north did not have a non-sandbar LCS fishing season in 2009. In the GOM region, due to the June 6, 2009, closure of the non-sandbar LCS fishery and the Louisiana state water closure from April 1 - June 30, many fishery participants in the GOM did not have the opportunity to participate in the 2009 GOM non-sandbar LCS fishery. As such, NMFS has received requests from constituents that NMFS should consider the delay of the 2010 non-sandbar LCS fishing season until July to allow for more equitable shark fishing opportunities in 2010. Because the intent of Amendment 2 was to have the non-sandbar LCS quota available throughout the entire year, and given that this did not happen in 2009, NMFS proposes delaying the start of the 2010 shark fishery, as explained below. In addition to this rulemaking, NMFS is also considering future rulemaking to adjust the retention limits on a fishery-wide basis in order to meet the original intent of Amendment 2 of having the non-sandbar LCS quota last the entire year.

The other proposed change to the 2010 shark fishing season results from the implementation of draft Amendment 3 to the 2006 Consolidated HMS FMP (73 FR 36392, July 24, 2009). In Amendment 3, NMFS proposes measures to establish new non-blacknose SCS and blacknose shark quotas in order to rebuild blacknose sharks and end overfishing of this species and to establish a mechanism for implementing annual catch limits (ACLs) and accountability measures (AMs). In this current action, NMFS also proposes delaying the opening of the 2010 SCS fishing season to allow for the implementation of Amendment 3. A delay would ensure the SCS fishery

opens under the measures that may be established in Amendment 3, which would help in the rebuilding of blacknose sharks that are currently overfished and experiencing overfishing. In addition, for stocks that were determined to be overfished before July 12, 2009, ACLs must be established before the 2010 fishing year. As such, a delay would allow time for the establishment of ACLs before the start of the 2010 fishing season, which is consistent with the Magnuson-Stevens Act.

Accounting for Under- and Overhavests

Consistent with 50 CFR 635.27(b)(1)(vii)(A), if the available quota in a particular region or in the research fishery for non-sandbar LCS is exceeded in any fishing season, NMFS will deduct an amount equivalent to the overharvest(s) from the quota in that region or in the research fishery for the following fishing season or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years, in the specific region or research fishery where the overharvest occurred. If the available quota for sandbar sharks, SCS, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) is exceeded in any fishing season, NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing season or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years. If the blue shark quota is exceeded, NMFS will reduce the annual commercial quota for pelagic sharks (other than porbeagle or blue sharks) by the amount that the blue shark quota is exceeded prior to the start of the next fishing season or, depending on the level of overharvest(s), NMFS will deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years.

If an annual quota for sandbar sharks, SCS, blue sharks, porbeagle sharks, or pelagic sharks (other than porbeagle or blue sharks) is not exceeded, NMFS may adjust the annual quota depending on the status of the stock or quota group. If the annual quota for non-sandbar LCS is not exceeded in either region or in the research fishery, NMFS may adjust the annual quota for that region or the research fishery depending on the status of the stock or quota group. If the stock/complex (e.g., sandbar sharks, porbeagle sharks, non-sandbar LCS, or blue sharks) or specific species within a quota group (e.g., blacknose sharks within the SCS complex) is declared to be overfished, to have overfishing occurring, or to have an unknown status, NMFS will not adjust the following fishing year's quota for any underharvest, and the following fishing year's quota will be equal to the base annual quota (or the adjusted base quota for sandbar sharks and non-sandbar LCS until December 31, 2012).

Currently, blacknose sharks within the SCS complex and sandbar sharks have been determined to be overfished with overfishing occurring. Porbeagle sharks have been determined to be overfished. Blue sharks and pelagic sharks (other than porbeagle or blue sharks) have an unknown stock status. Finally, blacktip sharks in the Gulf of Mexico region were determined to not be overfished with no overfishing occurring. However, blacktip sharks are included in the non-sandbar LCS complex for the Atlantic and Gulf of Mexico regions, the status of which has been determined to be unknown. Therefore, since the individual species, complexes, and species within a complex have all been determined to be either overfished, overfished with overfishing occurring, or unknown, no underharvests from the 2009 Atlantic commercial shark fishing season will be applied to the 2010 annual quotas or adjusted base quotas. Thus, the 2010 proposed quotas would be equal to the base annual quota for porbeagle sharks, blue sharks, and pelagic sharks (other than porbeagle or blue sharks) or the adjusted base annual quota for sandbar sharks and non-sandbar LCS, minus any potential overharvests that occurred in the 2008 and 2009 fishing seasons. The 2010 proposed SCS quota and possibly the SCS complex quota, could change depending on the measures established in the final rule for implementing Amendment 3 to the Consolidated HMS FMP.

2010 Proposed Quotas

This rule proposes minor changes to the overall adjusted base and annual commercial quotas due to overharvests in 2008 and 2009. The proposed 2010 quotas by species and species group are summarized in Table 1.

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Table 1. 2010 proposed quotas and opening dates for non-sandbar LCS and sandbar sharks. All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise.

Species Group	Region	2009 Annual Quota (A)	Preliminary 2009 Landings[1] (B)	Overharvest (C)	2010 Base Annual Quota[2] (D)	2010 Proposed Quota (D-C)	Season Opening Dates[3]
Non-Sandbar Large Coastal Sharks	Gulf of Mexico	390.5 (860,896 lb dw)	317.2 (699,366 lb dw)	-	390.5 (860,896 lb dw)	390.5 (860,896 lb dw)	July 15, 2010
	Atlantic	187.8 (414,024 lb dw)	200.8 (442,790 lb dw)	13	187.8 (414,024 lb dw)	174.8 (385,364 lb dw)	July 15, 2010
Non-Sandbar LCS Research Quota	No regional quotas	37.5 (82,673 lb dw)	37 (81,572 lb dw)	-	37.5 (82,673 lb dw)	37.5 (82,673 lb dw)	On or about January 1, 2010
Sandbar Research Quota		87.9 (193,784 lb dw)	79.7 (175,627 lb dw)	-	87.9 (193,784 lb dw)	87.9 (193,784 lb dw)	On or about January 1, 2010
Small Coastal Sharks[4]		454 (1,000,888 lb dw)	180.1 (397,190 lb dw)	-	454 (1,000,888 lb dw)	454 (1,000,888 lb dw)	On or about April 30, 2010
Blue Sharks		273 (601,856 lb dw)	1.4 (3,122 lb dw)	-	273 (601,856 lb dw)	273 (601,856 lb dw)	On or about January 1, 2010

Porbeagle Sharks		1.4 (3,086 lb dw)	0.2 (383 lb dw)	0.2 [5]	1.7 (3,748 lb dw)	1.5 (3,307 lb dw)	On or about January 1, 2010
Pelagic Sharks Other Than Porbeagle or Blue		488 (1,075,856 lb dw)	69.7 (153,723 lb dw)	-	488 (1,075,856 lb dw)	488 (1,075,856 lb dw)	On or about January 1, 2010

[1] Landings are from January 23, 2009, through September 15, 2009, and are subject to change.

[2] 2010 annual base quotas for sandbar and non-sandbar LCS are the annual adjusted base quotas that are effective from July 24, 2008, until December 31, 2012 (50 CFR 635.27(b)(1)(iii) and (iv)).

[3] The January 1, 2010 proposed opening dates are dependant on the effective date of the final rule. The on or about April 30 proposed opening date is dependant on the effective date for the final rule implementing Amendment 3.

[4] The quota in the table is based on current SCS quota regulations. NMFS published a proposed rule and draft Amendment 3 to the Consolidated HMS FMP (73 FR 36392, July 24, 2009) that would establish new non-blacknose SCS and blacknose shark quotas starting in the 2010 SCS fishing season.

[5] NMFS intends to adjust the 2010 quota for porbeagle sharks to account for the 0.2 mt dw overharvest that occurred in 2008 after the 0.3 mt dw overharvest was accounted for in the final rule establishing the 2009 quota.

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Based on dealer reports received as of September 15, 2009, only the non-sandbar LCS quota in the Atlantic region was exceeded during the 2009 Atlantic commercial shark fishing season. The 2010 proposed quotas for the respective shark complexes/species are subject to change in the final rule for this action, based on the final Amendment 3 to the Consolidated HMS FMP and any overharvests in the 2009 season revealed once all of the 2009 landings data has been received and analyzed. In the final rule, NMFS will adjust the quotas based on dealer reports received as of October 30, 2009. All dealer reports that are received by NMFS after that date will be used to adjust the 2011 quotas, as appropriate.

1. Proposed 2010 Quotas for Non-sandbar LCS and Sandbar Sharks Within the Shark Research Fishery

The 2010 adjusted base annual commercial quotas within the shark research fishery are 37.5 mt dw (82,673 lb dw) for non-sandbar LCS and 87.9 mt dw (193,784 lb dw) for sandbar sharks. This proposed rule would not change any of the overall adjusted base commercial quotas.

Within the shark research fishery, as of September 15, 2009, preliminary reported landings of non-sandbar LCS were at 98.7 percent (37 mt dw), and sandbar shark reported landings were at 90.6 percent (79.7 mt dw). These reported landings do not exceed the 2009 quota. Therefore, based on preliminary estimates and consistent with the current regulations at 50 CFR 635.27(b)(1)(vii), the 2010 proposed quotas do not need to be reduced based on any overharvests.

Under 50 CFR 635.27(b)(1)(vii)(A), because the individual species, complexes, or species within a complex have been determined to be either overfished, overfished with overfishing occurring, or have an unknown status, underharvests for these species and/or complexes would not be applied to the 2010 quotas. Therefore, the 2010 proposed quotas would be the adjusted base annual quotas for non-sandbar LCS and sandbar sharks within the shark research fishery (37.5 mt dw (82,673 lb dw) and 87.9 mt dw (193,784 lb dw), respectively).

2. Proposed 2010 Quotas for the Non-sandbar LCS in the Gulf of Mexico Region

The 2010 adjusted base annual quota for non-sandbar LCS in the Gulf of Mexico region is 390.5 mt dw (860,896 lb dw). As of September 15, 2009, preliminary reported landings were at 81.2 percent (317.2 mt dw) for non-sandbar LCS in the Gulf of Mexico region. These reported landings do not exceed the 2009 quota. However, since the status of this complex is unknown, any underharvest would not be applied to the 2010 adjusted base annual quota. Therefore, the 2010 proposed quota would be the adjusted base annual quota for non-sandbar LCS in the Gulf of Mexico region or 390.5 mt dw (860,896 lb dw).

3. Proposed 2010 Quotas for the Non-sandbar LCS in the Atlantic Region

The 2010 adjusted base annual quota for non-sandbar LCS in the Atlantic region would be 174.8 (385,364 lb dw). As of September 15, 2009, preliminary reported landings were at 106.9 percent (200.8 mt dw) for non-sandbar LCS in the Atlantic region. These landings exceed the 2009 quota by 13 mt dw (28,660 lb dw). As such, the overharvest would be applied to the 2010 adjusted base annual quota. Therefore, the 2010 proposed quota would be the adjusted base annual quota for non-sandbar LCS in the Atlantic region or 174.8 (385,364 lb dw) (187.8 mt dw annual base quota - 13 mt dw of 2009 overage = 174.8 mt dw 2010 adjusted annual quota).

4. Proposed 2010 Quotas for SCS and Pelagic Sharks

The 2010 annual commercial quotas for small coastal sharks, blue sharks, and pelagic sharks (other than porbeagle or blue sharks) are 454 mt dw (1,000,888 lb dw), 273 mt dw (601,856 lb dw), and 488 mt dw (1,075,856 lb dw), respectively. This proposed rule would not change the overall annual commercial quotas for porbeagle sharks and SCS. However, NMFS has proposed changes to the SCS quota in Amendment 3 (73 FR 36392, July 24, 2009). The quotas established in Amendment 3 would supersede the quotas established in this rule. The change for the 2010 porbeagle shark quota, which accounts for the additional overharvest experienced during the 2008 fishing season, would be 1.5 mt dw (3,307 lb dw).

As of December 31, 2008, the final reported landings of porbeagle sharks were 2.2 mt dw (4,471 lb dw) (127 percent of the 2008 1.7 mt dw (3,748 lb dw) annual base quota). In the final rule establishing the 2009 quotas (73 FR 79005, December 29, 2008), NMFS accounted for an overharvest of porbeagle sharks of 0.3 mt dw (601 lb dw). That final rule used data that was reported as of November 15, 2008. Between that date and December 31, 2008, an additional 0.2 mt dw was reported landed. As such, this additional overharvest of 0.2 mt dw (441 lb dw) is proposed to be deducted from the 2010 porbeagle shark quota. Per 50 CFR 635.27(b)(1)(vii)(A), if the available quota is exceeded in any fishing season, NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing season or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of five years. Given that the additional small overharvest of 0.2 mt dw (441 lb dw) was not accounted for in the 2009 quota (12 percent of the annual base porbeagle quota), NMFS is proposing to deduct the additional 2008 overharvest from the 2010 annual base commercial porbeagle quota. The 2010 adjusted annual commercial porbeagle quota would be 1.5 mt dw (3,307 lb dw) (1.7 mt dw annual base quota - 0.2 mt dw 2008 overage = 1.5 mt dw 2010 adjusted annual quota).

As of September 15, 2009, preliminary reported landings of SCS, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) were at 39.7 percent (180.1 mt dw), 0.5 percent (1.4 mt dw), 12.2 percent (0.2 mt dw), and 14.3 percent (69.7 mt dw), respectively. These landings do not exceed the available quotas. However, under 50 CFR 635.27(b)(1)(vii)(A), because the individual species, complexes, or species within a complex have been determined to be either overfished, overfished with overfishing occurring, or have an unknown status, underharvests for these species and/or complexes would not be applied to the 2009 quotas. Therefore, the 2010 proposed quotas would be the annual quotas for SCS, blue sharks, porbeagle sharks, and pelagic sharks (other than blue and porbeagle sharks) (454 mt dw (1,000,888 lb dw), 273 mt dw (601,856 lb dw), 1.5 mt dw (3,307 lb dw), and 488 mt dw (1,075,856 lb dw), respectively).

Proposed Fishing Season Notification for the 2010 Atlantic Commercial Shark Fishing Season

The 2010 Atlantic commercial shark fishing season for the shark research, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, is proposed to open on the effective date of the final rule for this action. NMFS is proposing different opening dates for the SCS and the Gulf of Mexico and Atlantic non-sandbar LCS seasons. NMFS considered two alternatives for opening the SCS fishing season: alternative A1, open the 2010 SCS

sharks fishing season on or about January 1, 2010 (No Action alternative) and alternative A2, open the 2010 SCS fishing season on the effective date of the final rule for Amendment 3 (Preferred alternative).

Alternative A1, the no action alternative, would open the 2010 SCS fishery on the effective date of the final rule for this current action, which is anticipated to be on or about January 1, 2010. Alternative A1 would not allow time for Amendment 3 to be implemented, which would cause blacknose sharks to continue to be overfished.

Alternative A2, the preferred alternative, would keep the SCS fishery closed until the effective date of the final rule for Amendment 3. This delayed opening would allow the SCS fishery to open under the quotas that would be finalized in Amendment 3, which would help rebuild blacknose sharks sooner than under the No Action Alternative. Alternative A2 would also allow the mechanism for establishing ACLs and AMs to be finalized before opening the SCS fishery consistent with the Magnuson-Stevens Act. Specifically, for stocks that were determined to be overfished before July 12, 2009, ACLs must be established before the 2010 fishing year. A delay in the 2010 SCS fishing season would allow ACLs to be established under Amendment 3 to be implemented before the start of the fishing season.

In 2009, the non-sandbar LCS fishing season did not remain open year-round as expected. Because of this, many fishermen in both the Gulf of Mexico and Atlantic did not have an opportunity to participate in the non-sandbar LCS fishery. NMFS considered three alternatives to address this situation while NMFS assesses the necessity of keeping the shark season open year-round, which was the intent of Amendment 2. These alternatives are: alternative B1, open the 2010 LCS on or about January 1, 2010 (No Action alternative); alternative B2, open the 2010 non-sandbar LCS fishery in the Atlantic region on July 15, 2010, and open the 2010 non-sandbar LCS fishery in the Gulf of Mexico region on January 1, 2010; and alternative B3, open the 2010 non-sandbar LCS fishery in the Atlantic and Gulf of Mexico regions on July 15, 2010 (Preferred Alternative).

Alternative B1, the no action alternative, would open the 2010 non-sandbar LCS fishery on the effective date of the final rule for this current action. Alternative B1 may not allow for the equitable distribution of the non-sandbar LCS quotas among fishery participants in all states of the Atlantic and Gulf of Mexico regions if catch patterns similar to 2009 are seen in 2010.

Alternative B2 would open the 2010 non-sandbar LCS fishery in the Atlantic region on July 15, 2009, and open the 2010 non-sandbar LCS fishery in the Gulf of Mexico region on the effective date of the final rule for this current action. This alternative would allow fishermen in the Gulf of Mexico region to have access to the non-sandbar LCS quotas at the beginning of 2010 when non-sandbar LCS are present in waters off the Gulf of Mexico. Gillnet fishermen in the Gulf of Mexico region would be able to harvest non-sandbar LCS with gillnets prior to the implementation of Amendment 3, which proposes to prohibit landing sharks with gillnet gear. In addition, alternative B2 would allow fishermen in the North Atlantic to have a fishing opportunity for non-sandbar LCS in 2010 with the delayed opening in the Atlantic region. Alternative B2 may not allow for the equitable distribution of the non-sandbar LCS quota in the Gulf of Mexico region due to state water closures off the coast of Louisiana from April 1 through June 30.

Alternative B3, the preferred alternative, would open the non-sandbar LCS fishery in the Gulf of Mexico and the Atlantic regions on July 15, 2010. In 2009, the non-sandbar LCS fishery in the Atlantic region was only open approximately five and a half months, which did not allow fishery participants in the North Atlantic to have a fishing season as the quota was taken before these sharks moved northward into their waters. In addition, fishermen in the North Atlantic were also limited in their fishing opportunities due to state and Federal water closures. In the Gulf of Mexico, in 2009, the non-sandbar fishery was open for approximately four months, and many fishermen experienced state water closures during this time frame and were limited in their ability to participate in the GOM non-sandbar LCS fishery. Thus, delaying the start of the 2010 non-sandbar LCS fishery in both the Atlantic and Gulf of Mexico regions would provide equitable fishing opportunities among shark fishery participants in all states to catch the non-sandbar LCS quota.

The preferred alternatives, A2 and B3, which would delay the SCS and non-sandbar LCS fishing seasons, could result in direct negative economic impacts on shark fishermen who would not be able to fish for SCS until Amendment 3 is implemented or for non-sandbar LCS until July 15, 2010. In addition, shark dealers and other entities that deal with shark products could experience negative economic impacts as SCS and non-sandbar LCS products would not be available at the beginning of the season. Gillnet fishermen could also experience negative economic impacts as they would not be able to fish for sharks prior to the implementation of Amendment 3 in 2010, and may not be able to fish for shark with gillnets after the implementation of Amendment 3 in 2010, depending on the final management measures implemented under Amendment 3. The preferred alternatives could result in direct negative social impacts as fishermen would have to fish in other fisheries where they hold permits, to make up for lost SCS and non-sandbar LCS revenues during the beginning of the 2010 fishing season and indirect negative social impacts on shark dealers and other entities that deal with shark products as they may have to diversify during the beginning of the season when SCS and non-sandbar LCS shark products would not be available. However, NMFS currently prefers alternatives A2 and B3 because fishermen in the North Atlantic and portions of the Gulf of Mexico, who had very limited access to the 2009 SCS and non-sandbar LCS quotas, could experience direct positive economic impacts as they would have access to the SCS and non-sandbar LCS quotas in 2010. Delaying the 2010 SCS fishing season under preferred alternative A2 could also allow for the rebuilding of blacknose sharks to begin sooner than under the no action alternative. Thus, delaying the SCS and non-sandbar LCS seasons under the preferred alternatives would allow for a more equitable distribution of the quotas among constituents in all regions, which was the original intent of Amendment 2, and would allow for the fastest rebuilding of blacknose sharks of all the alternatives considered in this rulemaking.

All of the shark fisheries would remain open until December 31, 2010, unless NMFS determines that the fishing season landings for sandbar shark, non-sandbar LCS, blacknose, non-blacknose SCS, blue sharks, porbeagle sharks, or pelagic sharks (other than porbeagle or blue sharks) has reached, or is projected to reach, 80 percent of the available quota. At that time, consistent with 50 CFR 635.27(b)(1), NMFS will file for publication with the Office of the **Federal Register** a notice of closure for that shark species group and/or region that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure

until NMFS announces, via a notice in the **Federal Register**, that additional quota is available, the fishery for the shark species group and, for non-sandbar LCS, region would remain closed, even across fishing years, consistent with 50 CFR § 635.28(b)(2).

Request for Comments

Comments on this proposed rule may be submitted via *http://www.regulations.gov*, mail, or fax. Comments may also be submitted at a public hearing (see Public Hearings and Special Accommodations below). NMFS solicits comments on this proposed rule by November 27, 2009 (see **DATES** and **ADDRESSES**). NMFS will hold three public hearings for this proposed rule. These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gu DuBeck at (301) 713–2347 at least 7 days prior to the hearing date. The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a representative of NMFS will explain the ground rules (*e.g.*, alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the hearing.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

In compliance with Section 603 of the Regulatory Flexibility Act (RFA), NMFS has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this proposed rule to analyze the impacts of delaying the 2010 SCS and non-sandbar LCS fishing seasons as adjustments to the non-sandbar LCS and porbeagle quotas based on overharvests from the previous fishing season have already been analyzed in Amendment 2 to the 2006 Consolidated HMS FMP. The IRFA analyzes the anticipated economic impacts of the preferred actions and any significant alternatives to the proposed rule that could minimize economic impacts on small entities. A summary of the IRFA is below. The full IRFA and analysis of social and economic impacts are available from NMFS (see **ADDRESSES**).

In compliance with section 603(b)(1) of the Regulatory Flexibility Act, the purpose of this proposed rulemaking is, consistent with the Magnuson-Stevens Act, to adjust the 2010 proposed quotas for non-sandbar LCS, sandbar sharks, SCS, blue sharks, porbeagle sharks, or pelagic sharks (other than porbeagle or blue sharks) based on overharvests from the previous fishing year. These adjustments are being implemented according to the regulations implemented in the final rule for Amendment 2 to the 2006 Consolidated HMS FMP. Thus, NMFS would expect few, if any, economic impacts to fishermen other than those already analyzed in Amendment 2 to the 2006 Consolidated HMS FMP based on the quota adjustments. In addition, NMFS is considering delaying the 2010 non-sandbar LCS shark fishery season in the Gulf of Mexico and Atlantic regions to allow for a more equitable distribution of the available quotas among constituents as well as delay the opening of the 2010 SCS fishing season to allow for the implementation of Amendment 3, which would implement new blacknose and non-blacknose SCS quotas to rebuild the blacknose shark stock and end overfishing of this species. While there are direct negative economic impacts associated with the proposed measures, delaying the opening of the 2010 SCS, and non-sandbar LCS fishing seasons could ensure that North Atlantic fishermen have access to the 2010 quotas and will allow for more equitable access to the quotas by all fishery participants.

In compliance with section 603(b)(2) of the Regulatory Flexibility Act, the objectives of this proposed rulemaking are to: (1) adjust the annual quotas for non-sandbar LCS in the Atlantic region and porbeagle sharks due to minor overharvests in 2008 and 2009; (2) delay of the 2010 non-sandbar LCS fishing season to allow for more equitable shark fishing opportunities in 2010; and, (3) delay the opening of the 2010 SCS fishing season to allow for the implementation of Amendment 3, which would implement new blacknose and non-blacknose SCS quotas to rebuild the blacknose shark stock and end overfishing of this species. A delay would also allow time for the establishment of ACLs before the start of the 2010 fishing season.

Section 603(b)(3) requires Federal agencies to provide an estimate of the number of small entities to which the rule would apply. NMFS considers all HMS permit holders to be small entities because they either had average annual receipts less than $4.0 million for fish-harvesting, average annual receipts less than $6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. These are the Small Business Administration (SBA) size standards for defining a small versus large business entity in this industry.

The commercial shark fishery is comprised of fishermen who hold a shark directed or incidental limited access permits (LAP) and the related industries including processors, bait houses, and equipment suppliers, all of which NMFS considers to be small entities according to the size standards set by the SBA. The proposed rule would apply to the approximately 223 directed commercial shark permit holders, 279 incidental commercial shark permit holders, and 100 commercial shark dealers as of March 18, 2009. Based on the 2008 ex-vessel price, the 2010 Atlantic shark commercial baseline quota could result in revenues of $11,987,348. The adjustment due to the overharvests would result in $555 loss in revenues in porbeagle fishery and $3,306 loss in revenue in the non-sandbar LCS fishery. These revenues are similar to the gross revenues analyzed in Amendment 2 to the 2006 Consolidated HMS FMP.

This proposed rule does not contain any new reporting, recordkeeping, or other compliance requirements (5 U.S.C. 603 (b)(4)). Similarly, this proposed rule would not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5)). Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. NMFS does not believe that the new regulations proposed to be implemented would duplicate, overlap, or conflict with any relevant regulations, Federal or otherwise.

Under section 603(c), agencies are required to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below and in Supplemental Environmental Assessment for the proposed action.

Additionally, the Regulatory Flexibility Act (5 U.S.C. 603 (c) (1)-(4)) lists four general categories of significant alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and, (4) exemptions from coverage of the rule for small entities.

In order to meet the objectives of this proposed rule, consistent with Magnuson-Stevens Act and the Endangered Species Act (ESA), NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act. Thus, there are no alternatives considered under the third category. As described below, NMFS analyzed several different alternatives in this proposed rulemaking and provides rationale for identifying the preferred alternative to achieve the desired objective.

The alternatives considered and analyzed have been grouped into two major categories. These categories include SCS and non-sandbar LCS. Under the SCS category, the alternatives include: (A1) allow the 2010 SCS fishing season to open upon the effective date of the final rule for the 2010 Atlantic shark specifications; and, (A2) open the 2010 SCS fishing season on the effective date of the final rule for Amendment 3 to the Consolidated HMS FMP. Under the non-sandbar LCS category, the alternatives include: (B1) allow the 2010 non-sandbar LCS fishery in the Atlantic and Gulf of Mexico regions to open upon the effective date of the final rule for the 2010 Atlantic shark specifications; (B2) open the 2010 non-sandbar LCS fishery in the Atlantic region on July 15, 2009 and open the 2010 non-sandbar LCS fishery in the Gulf of Mexico region upon the effective date of the final rule for the 2010 Atlantic shark specifications; and, (B3) Open the 2010 non-sandbar LCS fishery in the Atlantic and Gulf of Mexico regions on July 15, 2009.

The potential impacts these alternatives may have on small entities have been analyzed and are discussed below. The preferred alternatives include A2 and B3. A summary of the analyses follows. The economic impacts that would occur under these preferred alternatives were compared with the other alternatives to determine if economic impacts to small entities could be minimized while still accomplishing the stated objectives of this rule.

The proposed changes to the opening dates for the SCS and non-sandbar LCS were analyzed for each proposed alternative. Under alternative A1, the No Action alternative, NMFS would not delay the opening of the 2010 SCS fishing season and there would be no additional economic impacts to directed and incidental shark permit holders that were not analyzed in Amendment 2. In addition, under the No Action alternative, gillnet fishermen would be able to harvest SCS with gillnets until the implementation of Amendment 3, depending on what management measures are finalized in Amendment 3. The annual quota for SCS of 454 mt dw (1,000,888 lb dw) would be available upon the effective date of the final rule for the 2010 Atlantic shark specifications to fishermen in all regions of the Atlantic, Gulf of Mexico, and Caribbean Sea. Based on the analysis in the Draft Environmental Impact Statement (DEIS) for draft Amendment 3, the average annual gross revenues from 2004 through 2007 from all SCS meat and fins was $833,634. However, fishermen would most likely not harvest the entire current SCS quota of 454 mt dw and realize these gross revenues by the time the final rule for Amendment 3 is implemented in 2010.

Depending on the level of SCS harvest prior to the implementation of Amendment 3, once Amendment 3 is implemented, there may be no non-blacknose SCS and blacknose shark quota available for the rest of 2010 due to the reduced quotas proposed in draft Amendment 3. Any SCS overharvests that occur prior to Amendment 3 implementation would lower the quotas for the 2011 fishing season and create more severe economic losses in 2011. Finally, due to the availability of SCS later in the year in the waters off the North Atlantic, fishermen in the North Atlantic would likely not have a SCS fishing season in 2010. Given this, NMFS does not prefer alternative A1 at this time.

Under alternative A2, NMFS would delay the start of the 2010 SCS fishing season until implementation of the final rule for Amendment 3. There may be economic losses associated with the delay in the season, especially for fishermen in the southeast Atlantic and Gulf of Mexico that would have access to SCS at the beginning of 2010 and rely on SCS gross revenues at the beginning of the season. Depending on the quotas implemented under Amendment 3 for blacknose shark and non-blacknose SCS, economic losses could range from $126,174 to $172,197 for blacknose sharks and $502,145 to $661,513 for non-blacknose SCS. Depending on the final measures implemented under Amendment 3, gillnet fishermen could lose gross revenues from lost SCS fishing opportunities in 2010. Estimated losses for shark gillnet fishermen could be between $90,059 to $90,501 for blacknose sharks and $275,008 to $287,427 for non-blacknose SCS. However, these losses are independent of this proposed action and were fully analyzed in the DEIS for draft Amendment 3. In addition, shark dealers and other entities that deal with shark products could experience negative economic impacts as SCS products would not be available at the beginning of the season. This would be most prevalent in areas of the southeast Atlantic and Gulf of Mexico where SCS are available early in the fishing season. The delay in the SCS fishing seasons could causes changes in ex-vessel prices. From 2004 through 2008, the average ex-vessel price of SCS meat in January is approximately $0.58, whereas the average ex-vessel price in mid- to late-Spring is $0.69. Fin prices are not reported by species. As such, the ex-vessel price data for shark fins is the same for SCS and LCS. The average price for fins in January is $16.36. When the SCS fishery opens in mid- to late-Spring, the average price for fins would be $7.35.

Delaying the 2010 SCS fishing season until the implementation of Amendment 3 would allow the blacknose shark stock to rebuild as quickly as possible, and would translate into higher SCS quotas with higher associated gross revenues in the shortest time period possible. In addition, since both blacknose sharks and non-blacknose SCS are present in waters off the North Atlantic later in the year, delaying the opening of the 2010 SCS fishing season could help ensure that North Atlantic fishermen have access to the non-blacknose SCS and blacknose shark quotas implemented under Amendment 3, allowing for more equitable access to the quotas by all constituents. Thus, while there are direct negative economic impacts

associated with alternative A2, NMFS prefers this alternative at this time.

Under alternative B1, the No Action alternative, NMFS would not delay the opening of the 2010 non-sandbar LCS fishing seasons and there would be no additional economic impacts to directed and incidental shark permit holders that were not previously analyzed under Amendment 2. However, one of the main objectives of Amendment 2 was to allow for a year-round shark fishery in the Atlantic and Gulf of Mexico regions to help reduce discards of sharks and allow an opportunity to fishermen in all regions to be able to harvest the available quota. Alternative B1 would likely not meet this objective if the 2010 catches and catch rates are similar to 2009. Therefore, NMFS does not prefer this alternative at this time.

Under alternative B2, NMFS would delay the opening of the non-sandbar LCS fishery in the Atlantic region until July 15, 2009, but would open the non-sandbar LCS fishery in the Gulf of Mexico region upon the effective date of the final rule for the 2010 Atlantic shark specifications. Alternative B2 could result in negative economic impacts to fishermen in the southeast Atlantic if those fishermen depend on shark revenues early in the shark fishing season as they would not be able to land non-sandbar LCS when non-sandbar LCS would be present in waters off the southeast Atlantic. In addition, alternative B2 could result in negative economic impacts to gillnet fishermen in the Atlantic region who would potentially not be able to harvest non-sandbar LCS with gillnets in 2010, depending on final management measures implemented under Amendment 3. However, under alternative B2, fishermen in the North Atlantic would have fishing opportunities for non-sandbar LCS in 2010 as was the intent of Amendment 2. The non-sandbar LCS quota in the Atlantic region and its associated gross revenues of an estimated $381,525 based on 2008 ex-vessel prices would be more equitably distributed among Atlantic states by delaying the opening of the non-sandbar LCS fishery until July 15, 2009, under alternative B2.

The economic impacts of alternative B2 in the Gulf of Mexico region would be the same as analyzed under Amendment 2. In addition, gillnet fishermen in the Gulf of Mexico region could harvest non-sandbar LCS with gillnets prior to the implementation of Amendment 3, which may prohibit the landing of sharks with gillnet gear. However, state waters off Louisiana are closed to large coastal shark fishing from April 1 through June 30 of each year. During 2009, the non-sandbar LCS fishery closed on June 6, 2009. Thus, allowing the Federal non-sandbar LCS fishery in the Gulf of Mexico to be open at the beginning of the year in 2010 may result in negative economic impacts for Louisiana State fishermen if the non-sandbar LCS quota is harvested before the re-opening of Louisiana state waters in 2010. Therefore, NMFS does not prefer alternative B2 at this time.

Under alternative B3, NMFS would delay the opening of the non-sandbar LCS fishery in the Atlantic and Gulf of Mexico regions until July 15, 2009. Alternative B3 could result in negative economic impacts to fishermen in the southeast Atlantic and Gulf of Mexico if those fishermen depend on shark revenues early in the shark fishing season as they would not be able to land non-sandbar LCS when non-sandbar LCS would be present in waters off these regions. In addition, alternative B3 could result in negative economic impacts to gillnet fishermen in the Atlantic region who may not be able to harvest non-sandbar LCS with gillnets during 2010, depending on final management measures implemented under Amendment 3. Based on the analysis in the DEIS for draft Amendment 3, this could result in lost non-sandbar LCS revenues of $106,479 to $109,479 for gillnet fishermen. Also, shark dealers and other entities that deal with shark products could experience negative economic impacts as non-sandbar LCS products would not be available at the beginning of the season. This would be most prevalent in areas of the southeast Atlantic and Gulf of Mexico where non-sandbar LCS are available early in the fishing season. The delay in the non-sandbar LCS fishing seasons could causes changes in ex-vessel prices. From 2004 through 2008, the average ex-vessel price of LCS meat in January is approximately $0.57, while the average ex-vessel price in July is $0.48. The average price for fins in January is $16.36. When the LCS fishery opens in July, the average price for fins would be $19.06.

However, under alternative B3, fishermen in the North Atlantic would have fishing opportunities for non-sandbar LCS in 2010 as was the intent of Amendment 2. The non-sandbar LCS quota in the Atlantic region and its associated gross revenues of an estimated $381,525, based on 2008 ex-vessel prices, would be more equitably distributed among Atlantic states by delaying the opening of the non-sandbar LCS fishery until July 15, 2009, under alternative B3. In addition, state waters off Louisiana are closed to LCS fishing from April 1 through June 30 of each year. Therefore, opening the Federal non-sandbar LCS fishery in the Gulf of Mexico on July 15, 2010, may allow for a more equitable distribution of the non-sandbar LCS quota in the Gulf of Mexico region, estimated to be worth $839,376 based on 2008 ex-vessel prices. Given alternative B3 helps to meet the original intent of Amendment 2 and would allow fishermen in all regions to have more reasonable access to the available non-sandbar LCS quotas, NMFS prefers alternative B3 at this time.

Dated: October 23, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E9–25989 Filed 10–27–09; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 74, No. 207

Wednesday, October 28, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request; Correction

October 23, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Horse Protection Regulations.

OMB Control Number: 0579–0056.

Summary of Collection: 9 CFR Part 11, Regulations, implement the Horse Protection Act of 1970 (Pub. L. 91–540), as amended July 13, 1976 (Pub. L. 94–360), and are authorized under Section 9 of the Act. The Horse Protection Legislation was enacted to prevent showing, exhibiting, selling, or auctioning of ''sore'' horses, and certain transportation of sore horses in connection therewith at horse shows, horse exhibitions, horse sales, and horse auctions. A sore horse is a horse that has received pain-provoking practices that cause the horse to have an accentuated, high stepping gait. Sore horses cannot be entered in an event by any person, including trainers, riders, or owners. Management of shows, sales, exhibitions, or auctions must identify sore horses to prevent their participation under the act.

Need and Use of the Information: APHIS will collect information at specified intervals from Horse Industry Organizations (HIO) and show managements. HIOs must maintain an acceptable Designated Qualified Person program and recordkeeping system as outlined in the regulations. Information provided by the HIOs through designated qualified persons allows APHIS to monitor whether enforcement of the Horse Protection Act, its regulations, and certifying programs are effective.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1.514.

Frequency of Responses: Recordkeeping; Reporting: Quarterly; Monthly; Annually.

Total Burden Hours: 2,266.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–25922 Filed 10–27–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Virginia State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of Availability of proposed changes in the Virginia NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Virginia that changes must be made in the NRCS State Technical Guide specifically in practice standards: #360, Closure of Waste Impoundments; #367, Waste Facility Cover; #607, Surface Drainage, Field Ditch; #608, Surface Drainage, Main or Lateral and #634, Waste Transfer. These practices will be used to plan and install conservation practices on cropland, pastureland, woodland, and wildlife land.

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to John A. Bricker, State Conservationist, Natural Resources Conservation Service (NRCS), 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229–5014; Telephone number (804) 287–1691; Fax number (804) 287–1737. Copies of the practice standards will be made available upon written request to the address shown above or on the Virginia NRCS Web site: *http://www.va.nrcs.usda.gov/technical/draftstandards.html*.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Virginia will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Virginia regarding disposition of those comments and a final determination of change will be made to the subject standards.

Dated: October 19, 2009.

John A Bricker,

State Conservationist, Natural Resources Conservation Service, Richmond, Virginia.

[FR Doc. E9–25931 Filed 10–27–09; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Solicitation of Input From Stakeholders on the Tribal Colleges Research Grants Program, Tribal Colleges Education Equity Grants Program and Tribal Colleges Extension Services Program

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Request for written stakeholder input.

SUMMARY: The National Institute of Food and Agriculture (NIFA) is requesting written stakeholder input on the following NIFA grant programs: (1) Tribal College Research Grants Program, (2) Tribal Colleges Education Equity Grants Program, and (3) Tribal Colleges Extension Services Program. The programs are authorized under Sections 534(a), 534(b), and 536 of the Equity in Educational Land-Grant Status Act of 1994.

Tribal College Research Grants Program

Authority for this program is contained in section 536 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note), as amended (hereinafter ''the Act''). In accordance with the statutory authority, subject to the availability of funds, the Secretary of Agriculture may award competitive grants to assist the 1994 Land-Grant Institutions (hereinafter ''1994 Institutions'') in conducting agricultural research that addresses high priority concerns of Tribal, national or multi-State significance.

Tribal Colleges Education Equity Grants Program

Authority for this program is contained in section 534(a) of the Act. Subject to the availability of appropriations, the U.S. Department of Agriculture (USDA), through the National Institute of Food and Agriculture (NIFA), will award grants to the thirty-four 1994 Institutions as defined in section 532 of the Act. This Act, in Section 533(a), requires that each 1994 Institution be accredited or making progress towards accreditation to receive funding under this and the other programs. The purpose of this program is to enhance educational opportunities for Native Americans by strengthening instructional programs in the food and agricultural sciences at the thirty-four colleges or universities designated as 1994 Institutions.

Tribal Colleges Extension Services Program

Authority for this program is contained in section 534(b) of the Act. This section amends section 3 of the Act of May 8, 1914 (Smith-Lever Act) (7 U.S.C. 343). Under this authority, appropriated funds are to be awarded to the 1994 Institutions for Extension work and funds are to be distributed on the basis of a competitive application process.

By this notice, NIFA is soliciting public comment and stakeholder input from interested parties regarding the future design and implementation of the 1994 Tribal College Grant Programs described above.

DATES: All written comments must be received by November 27, 2009.

ADDRESSES: You may submit comments, identified by NIFA–2009–0008, through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Include NIFA–2009–0008 in the subject line of the message.

Fax: (202) 401–7752.

Mail: Paper, disk or CD–ROM submissions should be submitted to Office of Extramural Programs Unit, National Institute of Food and Agriculture, U.S. Department of Agriculture, Mail Stop 2299, 1400 Independence Avenue, SW., Washington, DC 20250–2299.

Hand Delivery/Courier: Joanna Moore, Office of Extramural Programs Unit, National Institute of Food and Agriculture, U.S. Department of Agriculture, Room 2250, Waterfront Centre, 800 9th Street, SW., Washington, DC 20024.

Instructions: All submissions received must include the Title, ''1994 Tribal Colleges'' and NIFA–2009–0008. All comments received will be posted to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Joan Gill, 202–720–6487 (phone), 202–720–2030 (fax), *jgill@nifa.usda.gov* or Saleia Afele-Faamuli, 202–720–0384 (phone), 202–720–2030 (fax), *sfaamuli@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION: On October 1, 2009, all programs and authorities delegated to the Cooperative State Research, Education, and Extension Service (CSREES) were transferred to the NIFA per section 7511 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

Background and Summary

Purpose

NIFA is considering releasing the Request for Applications (RFAs) for all three Tribal College Programs on the same day in mid December 2009 with the due date for application submission on the same day in early March 2010. The peer review panel for each of the programs will be conducted during early May 2010. For existing grantees, the RFA will request all applicants provide evidence of a college plan or roadmap showing that active projects funded through any of the three 1994 Tribal Colleges programs are being utilized in a coordinated manner within the college's land grant office or mission area. In addition, existing grantees will be asked to numerically indicate any recruiting, retention, course or degree enrollments, internships, outreach clients or graduation rates, or other indicators of program activity in the food and agriculture initiatives supported by active grants from the aforementioned programs.

The purpose of the grant programs is designed to build the land-grant capability in institutional teaching, research, and extension capacities of the eligible institutions in the following three major goals:

(1) To advance cultural diversity of the food and agricultural scientific and professional work force by attracting and educating more students from underrepresented groups;

(2) To strengthen linkages among the 1994 Institutions, other colleges and universities, USDA, and private industry; and

(3) To enhance the quality of teaching, research, and extension programs at the 1994 Institutions to enable them to better serve their students and communities by building capacity to provide science based information and decision making to solve problems and take advantage of opportunities—thus establishing them as relevant partners in the U.S. food and agricultural sciences higher education system.

In developing the FY 2010 1994 Tribal College RFAs, NIFA plans to consider all stakeholder input and the written comments received in response to this notice.

Done at Washington, DC, this 22nd day of October, 2009.

Ralph Otto,

Associate Administrator, National Institute of Food and Agriculture.

[FR Doc. E9–25854 Filed 10–27–09; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Fish and Seafood Promotion

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 28, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to John M. Ward, (301) 713–9504 or *John.M.Ward@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the authority of the Fish and Seafood Promotion Act of 1986 information collected under this program is used to promote domestically-produced fishery products. The information collection requirements can be broadly divided into two categories: (1) Information required of an individual or organization applying for consideration to form a seafood promotion council, and (2) information required of a formed and operating council, or permitted for its participants. Information required of an individual or organization applying for consideration to form a council, consists of an 'application for charter', composed of three subparts: Petition, proposed charter, and a list of eligible referendum participants. The information collection required of a formed and operating council, or permitted for its participants, is as follows: Council submission of an annual plan, an annual budget, and an annual financial report; council submissions of semiannual progress reports; notice of assessments once a year; list of council nominations following a favorable referendum once a year; and meeting notices once a year.

II. Method of Collection

Information can be submitted via e-mail.

III. Data

OMB Control Number: 0648–0556.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions; and business or other for-profit organizations.

Estimated Number of Respondents: 3.

Estimated Time per Response: 320 hours.

Estimated Total Annual Burden Hours: 960 hours.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 23, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–25950 Filed 10–27–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR73

Endangered Species; File No. 14249

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Ronald Smolowitz, Coonamessett Farm Foundation, Inc., 277 Hatchville Road, East Falmouth, MA 02536, has been issued a permit to take loggerhead (Caretta caretta), leatherback (*Dermochelys coriacea*), Kemp's ridley (*Lepidochelys kempii*), and green (*Chelonia mydas*) sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281–9300; fax (978)281–9333.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Kate Swails, (301)713–2289.

SUPPLEMENTARY INFORMATION: On February 24, 2009, notice was published in the **Federal Register** (74 FR 8230) that a request for a scientific research permit to take loggerhead, leatherback, Kemp's ridley, and green sea turtles had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Researchers will evaluate modifications to scallop dredge gear that may reduce the probability of turtle injuries due to interactions with gear. They will also study sea turtle behavior so that behavior can be factored into bycatch reduction strategies and collect biological and animal health information to improve NMFS' ability to assess stocks and the impact of anthropogenic activities. Up to 23 loggerheads, 1 leatherback, 1 green, and 1 Kemp's ridley would be taken during

the dredge gear study. All of these takes could result in injury or mortality. Up to 100 loggerheads would be followed by a remotely operated vehicle annually during the behavior study. Up to 10 loggerheads would be captured annually by dip net and have a satellite transmitter or Crittercam attached to their carapace. All animals would be measured, flipper and passive integrated transponder tagged, tissue sampled, cloacal swabbed, nasal swabbed, photographed, weighed, and released. Dead animals could be salvaged for scientific purposes. This is a 5 year permit and research activities would occur in the Atlantic Ocean off the coast of the northeastern United States.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: October 21, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–25985 Filed 10–27–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR77

Draft Programmatic Environmental Impact Statement; Seismic Surveys in the Chukchi and Beaufort Seas, Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Draft Programmatic Environmental Impact Statement (DPEIS); Notice of Withdrawal.

SUMMARY: On November 17, 2006, pursuant to the National Environmental Policy Act (NEPA), NMFS and the Minerals Management Service (MMS) announced our intent to prepare a DPEIS that would describe and analyze the potential significant environmental impacts related to reasonably foreseeable proposed geophysical exploration using seismic surveys in the waters of the Chukchi and Beaufort seas. A Notice of Availability (NOA) for the DPEIS and a schedule of public hearings was published on April 6, 2007. Since that date, new information has become available that may affect aspects of the analysis in the DPEIS and potentially the document's scope and range of alternatives. Therefore, NMFS and MMS are withdrawing the 2007 DPEIS and initiating a new NEPA process that will consider and incorporate this new information.

DATES: Effective October 28, 2009.

FOR FURTHER INFORMATION CONTACT: For any further information, contact P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 or by telephone at (301) 713–2289.

SUPPLEMENTARY INFORMATION: On April 6, 2007, NMFS and MMS published a NOA for a DPEIS and a schedule of public hearings (72 FR 17117) to assess the impacts of MMS' issuance of permits and authorizations under the Outer Continental Shelf Lands Act for the conduct of seismic surveys in the Chukchi and Beaufort seas off Alaska, and NMFS' authorizations under the Marine Mammal Protection Act to incidentally harass marine mammals while conducting those surveys. The proposed scope and effects of the seismic survey activities analyzed in the DPEIS were based on the best available information at the time. Since then, new information (e.g., scientific study results, changes in projections of seismic activity) has become available that may potentially alter the scope, set of alternatives, and analyses in the DPEIS. Also, there has been a renewed interest in exploratory drilling in both the Chukchi and Beaufort Seas. Therefore, NMFS and MMS believe it is appropriate to withdraw the 2007 DPEIS and initiate a new NEPA EIS process that will include this new information. Public comment and participation opportunities will be provided through this new NEPA process. We will be entering into discussions with stakeholders to determine how best to proceed and will publish a Notice of Intent to prepare a new EIS with dates and locations of public meetings on this subject.

Dated: October 21, 2009.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–25983 Filed 10–27–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–588–845

Stainless Steel Sheet and Strip in Coils from Japan: Notice of Extension of Time Limit for the Final Results of the 2007–2008 Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Kate Johnson at (202) 482–4929, or Rebecca Trainor at (202) 482–4007, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2009, the Department of Commerce (the Department) published a notice for the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Japan covering the period July 1, 2007, through June 30, 2008. *See Stainless Steel Sheet and Strip in Coils from Japan: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 39615 (August 7, 2009). The final results for this administrative review are currently due no later than December 7, 2009, the next business day after 120 days from the date of publication of the preliminary results of review.

Extension of Time Limit for the Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the deadline for the final results to a maximum of 180 days after the date on which the preliminary results are published.

The Department requires additional time to complete this review because case and rebuttal briefs will not be received until late November 2009. Thus, it is not practicable to complete this review within the original time limit. Therefore, the Department is extending the time limit for completion of the final results of this review by 60 days, in accordance with section 751(a)(3)(A) of the Act. The final results

are now due no later than February 3, 2010.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 22, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–25951 Filed 10–27–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–351–840)

Certain Orange Juice from Brazil; Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 28, 2009.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Hector Rodriguez, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3874 or (202) 482–0629, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 2009, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on certain orange juice from Brazil. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 19042 (April 27, 2009). The period of review is March 1, 2008, through February 28, 2009, and the preliminary results are currently due no later than December 1, 2009. The review covers two producers/exporters of the subject merchandise to the United States.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of Tariff Act of 1930, as amended (the Act), the Department shall make a preliminary determination in an administrative review of an antidumping order within 245 days after the last day of the anniversary month of the date of publication of the order. Section 751(a)(3)(A) of the Act further provides, however, that the Department may extend the 245-day period up to 365 days if it determines it is not practicable to complete the review within the foregoing time period. We determine that it is not practicable to complete this administrative review within the time limits mandated by section 751(a)(3)(A) of the Act because we are unable to conduct verifications required for both respondents before the preliminary results. Therefore, we have fully extended the deadline for completing the preliminary results until March 31, 2010. The deadline for the final results of the review continues to be 120 days after the publication of the preliminary results.

This extension notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: October 22, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–25949 Filed 10–27–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Smart Grid Interoperability Panel Governing Board, request for nominations; and request for comments on draft Smart Grid Interoperability Panel Charter and Bylaws

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology, on behalf of its contractor, EnerNex Corp., seeks nominations for members to serve on an initial Smart Grid Interoperability Panel Governing Board (SGIPGB), which will consist of approximately 27 voting members. EnerNex Corp. was competitively selected to help NIST establish and administer the Smart Grid Interoperability Panel (SGIP) and its Governing Board, which will identify, prioritize and address new and emerging requirements for Smart Grid interoperability and security.

Approximately 22 members of the SGIP Governing Board will be elected by stakeholder categories as listed in the draft SGIP Charter and Bylaws, which are posted on the Internet at: *http://collaborate.nist.gov/twiki-sggrid/bin/view/SmartGrid/SGIP.* Three SGIPGB members will be at-large members, and two will be the chairs of two SGIP Committees. The SGIPGB will also have several ex officio, non-voting members who will not be elected. All seats are open, and candidates are sought from each stakeholder category, as well as for the at-large positions.

NIST and EnerNex Corp. also request comments on the SGIP draft Charter and Bylaws, which are posted on the Internet at the Web site given above. Comments on this document can be made directly to the document's online comment section.

DATES: Nominations for the SGIPGB must be received on or before November 27, 2009. Nominations received by November 6, 2009, will be considered to be placed on the ballot for the initial SGIP Governing Board. Nominations received after that date will be considered for any positions for which nominations were not received by November 6, 2009, and for vacancies that may occur prior to the next call for candidates.

Comments on the SGIP Charter and Bylaws received before Nov. 6, 2009 will be incorporated into the initial documents. Comments received after that date will be considered for later amendments.

ADDRESSES: Nominations may be sent by e-mail, fax, or by mail to the SGIP Administrator: e-mail, *sgipgb.administrator@enernex.com;* fax, (865) 218–8999; mail, SGIPGB Administrator, EnerNex Corporation, 620 Mabry Hood Road, Suite 300, Knoxville, TN 37932.

The draft SGIP Charter and Bylaws are posted on the Internet at: *http://collaborate.nist.gov/twiki-sggrid/bin/view/SmartGrid/SGIP.* Comments on these documents can be made directly to the document's online comment section.

FOR FURTHER INFORMATION CONTACT: George Arnold, 100 Bureau Drive, Stop 8100, National Institute of Standards and Technology, Gaithersburg, MD 20899–8100, telephone (301) 975–5627.

SUPPLEMENTARY INFORMATION: While compiling the elements needed for a complete candidate submission, NIST encourages potential candidates to initially indicate their intent to submit as soon as possible through a simple e-mail.

A complete submission should include:

- Candidate name and contact information.
- Proposer name and contact information (if not the candidate).

• Relevant information that would help determine how the proposed candidate meets the criteria.

The SGIP Administrator will verify that the information is complete and contact candidates to confirm that their submission has been received. For submissions received on or before November 6, 2009, a slate of candidates by stakeholder category and at-large positions, who have been determined to meet the criteria, will be posted by November 13, 2009. For all submissions, the proposed candidates will be notified whether they meet the criteria within a reasonable time.

Qualified candidates are sought with experience in one or more of the following Stakeholder Category areas:

1. Appliance and consumer electronics providers.
2. Consumers—Commercial and Industrial (C&I).
3. Consumers—Residential.
4. Electricity and financial market traders (includes aggregators).
5. Electric utility companies—Investor Owned Utilities (IOU).
6. Electric utility companies—Municipal (MUNI).
7. Electric utility companies—Rural Electric Association (REA).
8. Electric transportation industry stakeholders.
9. Information and communication technologies (ICT) infrastructure and service providers.
10. Independent power producers.
11. Information technology (IT) application developers and integrators.
12. Power equipment manufacturers and vendors.
13. Professional societies, users groups, and industry consortia.
14. R&D organizations and academia.
15. Relevant federal government agencies.
16. Renewable power producers.
17. Retail service providers.
18. Standard and specification development organizations (SDOs).
19. State and local regulators.
20. Testing and certification vendors.
21. Transmission operators.
22. Venture capital.

Qualified candidates are also sought for three at-large positions.

Criteria to be considered in selecting nominees for the SGIPGB include:

• *Visionary Capability:* Candidates will be capable of understanding and contributing to the multi-disciplinary aspects of the Smart Grid and the specific goals of the SGIP mission.

• *Team Effectiveness:* Candidates will be able to work effectively within the scope of the Governing Board and within its organizational environment as a team.

• *Credibility and Outreach:* Candidates will be able to relay and leverage SGIPGB messages through the stakeholder community, contributing to underlying consensus building goals of the SGIPGB.

• *Recognition:* Candidates will be recognized experts in their technical fields of endeavor.

• *Commitment:* Candidates will be committed to contribute time and effort to SGIPGB activities.

EnerNex Corp. currently serves as the SGIP Administrator. A Candidate Evaluation Team established by the SGIP Administrator will consider proposed candidates against the criteria listed above to determine their eligibility. The SGIP Administrator will present a slate of eligible candidates for voting within the Stakeholder Categories and for the at-large positions. Organizations that have registered as SGIP members will then vote to select SGIPGB members between 5 p.m. Eastern, Monday, November 16, and 8 p.m. Eastern, Wednesday, November 18. To become a member of the SGIP an organization must register using the instructions at this Web site: *http://collaborate.nist.gov/twiki-sggrid/bin/view/SmartGrid/SGIP.*

Active participation in the SGIPGB offers a unique opportunity to accelerate and shape the standards-based information, telecommunications and control architecture for the future electric system from generation to end-use. Governing Board members are expected to invest significant effort in guiding the activities of the SGIP, advancing Priority Action Plans (PAPs) and lists of standards, guiding the development of a conformity assessment framework, and guiding the development of an architectural direction and reference framework through maintenance and evolution of the NIST conceptual architectural model. This means that investigation and presentation of concepts and results are natural components of this work. A serious commitment to attend meetings and review relevant material is required. Members will be expected to contribute between 5 percent and 15 percent of their time to SGIPGB activities (including attendance at a minimum of two face-to-face meetings per year, with a similar minimum number of Web conferences).

Background materials on the SGIPGB and related interoperability activities include:

• SGIPB Charter and Bylaws: *http://collaborate.nist.gov/twiki-sggrid/pub/SmartGrid/SGIP/SGIP_and_GB_Charter.doc.*

• NIST Framework and Roadmap for Smart Grid Interoperability Standards, Release 1.0 (Draft): *http://www.nist.gov/public_affairs/releases/smartgrid_interoperability.pdf.*

• GWAC Interoperability Context-Setting Framework (v 1.1) Document: *http://www.gridwiseac.org/pdfs/interop framework_v1_1.pdf.*

• GWAC Interoperability Path Forward White Paper: *http://www.gridwiseac.org/pdfs/interoperability_path_whitepaper_v1_0.pdf.*

• GWAC Interoperability Constitution White Paper: *http://www.gridwiseac.org/pdfs/constitution_whitepaper_v1_1.pdf.*

All of the documents listed above are available through the NIST Smart Grid Web site at: *http://www.nist.gov/smartgrid/* or the NIST Smart Grid Twiki Collaboration Site at: *http://collaborate.nist.gov/twiki-sggrid/bin/view/SmartGrid/WebHome.*

Dated: October 22, 2009.

Patrick Gallagher,

Deputy Director.

[FR Doc. E9–25970 Filed 10–27–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–911]

Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 28, 2009.

FOR FURTHER INFORMATION CONTACT: Mary Kolberg at (202) 482–1785; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2009, the Department of Commerce (''the Department'') published a notice announcing the opportunity to request an administrative review of the countervailing duty order on circular welded carbon quality steel pipe (''circular pipe'') from the People's Republic of China (''PRC''). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 31406

(July 1, 2009). On July 31, 2009, the Ad Hoc Coalition for Fair Pipe Imports and its individual members, Allied Tube & Conduit, IPSCO Tubulars, Inc., Northwest Pipe Company, Sharon Tube Company, Western Tube & Conduit Corporation, and Wheatland Tube Company (collectively, ''Petitioners'') timely requested an administrative review of ten exporters and producers covering the period November 13, 2007, through December 31, 2008. In accordance with 19 CFR 351.221(c)(1)(i), the Department published a notice initiating an administrative review of the countervailing duty order on circular pipe from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 42873 (August 25, 2009).

Rescission of Review

Pursuant to 19 CFR 351.213(d)(l), the Secretary will rescind an administrative review, in whole or in part, if the party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. On September 30, 2009, Petitioners withdrew their request for review of all ten exporters and producers within the 90-day period, and no other party requested a review. Therefore, in response to Petitioners' withdrawal, and as no one else requested a review, the Department is rescinding this administrative review.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess countervailing duties at the cash deposit rate in effect on the date of entry, for entries during the period November 13, 2007, through March 12, 2008 and from July 21, 2008, through December 31, 2008. Pursuant to section 703(d) of the Tariff Act of 1930, as amended (''the Act''), suspension of liquidation was discontinued on March 12, 2008, and no countervailing duties will be assessed on entries between March 12, 2008, and July 21, 2008. The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice of rescission of administrative review.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protection orders (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice of rescission is issued and published in accordance with sections 751(a)(l) and 777(i)(l) of the Act and 19 CFR 351.213(d)(4).

Dated: October 21, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–25952 Filed 10–27–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF EDUCATION

Federal Student Financial Assistance Programs Under Title IV of the Higher Education Act of 1965, as Amended

AGENCY: Department of Education.

ACTION: Notice inviting suggestions for new experiments for the Experimental Sites Initiative.

SUMMARY: The Secretary of Education invites institutions of higher education that participate in the student assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (the HEA), or consortiums of such institutions, to propose ideas for institutionally based experiments designed to test new ways of administering the student financial assistance programs authorized by title IV of the HEA (the Title IV, HEA programs). This effort is called the Experimental Sites Initiative (ESI). This notice is the first of two notices that the Secretary will publish regarding the ESI.

Under section 487A(b) of the HEA, the Secretary has the authority to grant waivers from specific Title IV, HEA statutory or regulatory requirements to allow institutions to test alternative methods for administering the Title IV, HEA programs. Such institutions are referred to in the HEA as ''experimental sites''. The Secretary seeks suggestions on how best to use this authority to reduce burden in the administration of the Title IV, HEA programs.

Consistent with section 487A(b) of the HEA, the Secretary cannot waive requirements related to need analysis, award rules, and grant and loan maximum award amounts. However, the Secretary anticipates approving experiments in a wide variety of other areas. The Secretary is particularly interested in suggestions for experiments that might produce stronger academic outcomes for students, such as improved persistence, shorter time to degree, and reduced reliance on outside work.

After reviewing the suggestions submitted by institutions as a result of this notice and constructing an evaluation design for approved experiments, the Secretary will publish a second notice in the **Federal Register** announcing approved experiments as well as the implementation and evaluative criteria for each approved experiment. The subsequent notice will invite institutions to apply to participate in one or more of those experiments, with preference given to the institution(s) that submitted the original suggestion.

DATES: Suggestions must be submitted no later than December 18, 2009 in order to ensure consideration for inclusion in the first phase of ESI.

ADDRESSES: Submissions must be submitted as an attachment to an e-mail sent to the following e-mail address: *experimentalsites@ed.gov.*

Instructions for Submitting Suggestions: We recommend that suggestions be prepared in either a Microsoft Word or Adobe Acrobat document that is attached to an electronic mail message sent to the e-mail address provided in the **ADDRESSES** section of this notice. We ask that submitters include the name and address of the institution that is submitting the suggestion and the name, title, mailing and e-mail addresses, and telephone number of a contact person for the institution or consortium. If the submission is from a consortium of institutions, we ask that the submitter list all institutions but only one contact person.

FOR FURTHER INFORMATION CONTACT: Warren Farr, U.S. Department of Education, Federal Student Aid, Room 43H2, 830 First Street, NE., Washington, DC 20002. E-mail at: *Warren.Farr@ed.gov* or by telephone at (202) 377–4380.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339. Individuals with disabilities can obtain this document in an accessible format (*e.g.* Braille, large print, audiotape, or computer diskette) by contacting Warren Farr.

SUPPLEMENTARY INFORMATION:

Background

Through ESI, we seek to experiment with ways to both improve services to students and free institutions and students from administrative burdens, while maintaining (or increasing) the

financial and programmatic integrity of the Title IV, HEA programs.

While the Title IV, HEA programs help make a postsecondary education possible for millions of students, their costs to the American taxpayer are considerable. Therefore, Congress and the Secretary have a justifiable interest in protecting the integrity of the programs and do so by establishing statutory and regulatory requirements. In many instances, these requirements also provide students with protections and safeguards. They also ensure that students and families are fully informed of their rights and responsibilities as applicants and recipients of assistance from the Title IV, HEA programs and have the information needed to make informed decisions.

At this time, we seek the assistance of institutions in identifying areas in the administration of the Title IV, HEA programs that could benefit from testing alternative ways of accomplishing the underlying goals of the current statutory or regulatory requirements. We also seek suggestions on how these alternatives could be evaluated.

We understand that the ability to construct rigorous experimental designs is a specialized skill not expected of most financial aid professionals. Therefore, we are not asking institutions that submit suggestions for experiments to prepare full project designs, including evaluation designs. In collaboration with the submitting institution, we will develop the final experimental designs and evaluation plans for each approved experiment before we invite institutions to participate in the experiments. The designs of all experiments must measure not only the results of the alternative approach, but also provide reasonable measures of what would have happened under the existing requirements.

We also may develop experiments in addition to those proposed by institutions and we will invite institutions to participate in those experiments as well as any submitted by institutions.

We will require institutions that participate in the experiments to provide data about the effectiveness of the proposed alternatives. For this reason, we are interested in suggestions about methodologies that could be used to collect comparable information about current statutory requirements. This comparable data could be based upon the treatment of a control group of students at the institution who are subject to the current requirement or collected from other, similar institutions whose students are subject to the current requirement.

This invitation for suggestions is a part of the Secretary's continuing effort to improve Title IV, HEA program administration in partnership with the higher education community. We have benefited tremendously from the community's contributions through the negotiated rulemaking process and in other ways and we look forward to working with the institutions that participate in the ESI.

Invitation for Suggestions

We hope that this invitation will encourage institutions to suggest innovative strategies that improve postsecondary student outcomes, relieve unnecessary burden, and maintain program accountability. We will consider the outcomes of these experimental strategies when proposing changes to the Title IV, HEA program regulations or, if appropriate, in legislative proposals to the Congress.

We note that the results of earlier experiments under the ESI contributed to a statutory change that relaxed the 30-day delay requirement for the disbursement of loan funds to first-year, first-time borrowers, and eased the requirement that single-term loans be disbursed in multiple installments.

The flexibilities tested by a consortium of community colleges also resulted in a statutory change in the HEA regarding the Ability to Benefit (ATB) requirements. Specifically, the HEA now provides another alternative for students without a high school diploma, or its equivalent, to become eligible to receive Title IV, HEA student aid funds.

Under ESI, we seek innovative approaches in a variety of different areas related to the administration of the Title IV, HEA programs. We also encourage institutions to collaborate in the development process of proposals. *We are interested in receiving suggestions that address the following:*

- The specific statutory or regulatory requirement(s) relating to the Title IV, HEA programs the institution or consortium seeks relief from in order to test its alternative approach.
- The perceived objective of, or reason for, the current requirement.
- How an alternative approach avoids or minimizes problems with the existing requirement and still addresses its objective.
- Additional benefits from the proposed alternative approach.

Because we must demonstrate that the experiments we implement have the potential to improve efficiency while at the same time protecting the integrity of Title IV, HEA programs, we are especially interested in experiments that integrate scientifically valid evaluation methodologies into the suggested experiments. *Thus, we would appreciate receiving suggestions that address the following components for evaluating the experiments:*

- Measuring the undesirable aspects of complying with the current regulatory or statutory requirement identified.
- Measuring how well the objective or reason behind the current regulatory or statutory requirement identified is being met now and how it will be met in the experiment.
- Measuring any additional benefits associated with a proposed experiment.
- The kind of data we should collect from the institution or consortium once we select sites for participation in the experiments.

Reports on past experiments under the ESI can be found on the Experimental Sites Web site at *https://experimentalsites.ed.gov/exp/reports.html.* The Secretary encourages new experiments in areas other than those previously tried.

Electronic Access to This Document

You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or portable document format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1094a.

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: October 23, 2009.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. E9–25973 Filed 10–27–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.042A]

Student Support Services (SSS) Program

ACTION: Extension; Notice extending the deadline dates.

SUMMARY: We extend the *Deadline for Transmittal of Applications* and the *Deadline for Intergovernmental Review* dates in the notice published on October 22, 2009 (74 FR 54554–54558).

SUPPLEMENTARY INFORMATION: On October 22, 2009, we published a notice in the **Federal Register** (74 FR 54554) inviting applications for new awards for fiscal year (FY) 2010 for the Student Support Services (SSS) Program. The *Deadline for Transmittal of Applications* date, as published on pages 54554 and 54555, has been extended to December 14, 2009. The *Deadline for Intergovernmental Review* date, as published on pages 54554 and 54556, has been extended to February 10, 2010.

FOR FURTHER INFORMATION CONTACT: Deborah Walsh or, if unavailable, contact Lavelle Redmond, U.S. Department of Education, 1990 K Street, NW., room 7000, Washington, DC 20006–8510. Telephone: (202) 502–7600 or by e-mail: *TRIO@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: October 23, 2009.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. E9–25971 Filed 10–27–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13532–000]

Hydrodynamics, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

October 21, 2009.

On July 7, 2009, Hydrodynamics, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the West Rosebud Hydro Project, which would be located on West Rosebud Creek, approximately 800 feet downstream of Emerald Lake, in Carbon County, Montana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A new 8-foot-high, 100-foot-long concrete diversion dam; (2) a new 7-foot-wide, 30-foot-long intake extending from the left side of the dam; (3) a new 42-inch-diameter, 2.3-mile-long steel penstock; (4) a new powerhouse containing one generating unit with an installed capacity of 3 megawatts; (5) a new tailrace discharging flows into West Rosebud Creek; (6) a new substation; (7) a new 50-kilovolt, 300-foot-long transmission line; and (8) appurtenant facilities. The proposed project would have an average annual generation of 21 gigawatt-hours.

Applicant Contact: Ben Singer, Project Manager, Hydrodynamics, Inc., P.O. Box 1136, Bozeman, MT 59771; phone: (406) 587–5086.

FERC Contact: Dianne Rodman, (202) 502–6077.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''eFiling'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.'' For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13532) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–25867 Filed 10–27–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–4–000]

Gulfstream Natural Gas System, LLC; Notice of Application

October 20, 2009.

On October 9, 2009, Gulfstream Natural Gas System, LLC (Gulfstream), pursuant to section 7(c) of the Natural Gas Act, as amended, and section 157 Subpart A of the Federal Energy Regulatory Commission's (Commission) regulations, filed to amend its certificate. Gulfstream seeks authorization to install and operate an additional 20,500 horsepower of compression at its existing compressor Station 420, in Manatee County, Florida as more fully explained in its application. The Phase V Expansion Project would cost about $50.8 million. Gulfstream asks that all authorizations

requested be issued on or before May 1, 2010.

Questions concerning this application may be directed to Lisa A. Moore, General Manager, Rates and Certificates, Gulfstream Natural Gas System, LLC at 5400 Westheimer Court, P.O. Box 1642, Houston, TX 77251–1642, or by calling (713) 627–4102, or by e-mailing *lamoore@spectraenergy.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 10, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–25868 Filed 10–27–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12693–002]

Sutton Hydroelectric Company LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

October 20, 2009.

On October 1, 2009, the Sutton Hydroelectric Company LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Sutton Project, to be located at the U.S. Army Corps of Engineers Sutton Dam, on the Elk River, in Sutton, Braxton County, West Virginia.

The proposed project would utilize the existing U.S. Army Corps of Engineers' Sutton Dam and would consist of: (1) A proposed powerhouse containing 3 generating units with a total generating capacity of 9.2 MW; (2) a 10-foot-diameter penstock; (3) a proposed 1,600-foot-long, 138-kV transmission line; (4) a tailrace; and (5) appurtenant facilities. The project would have an estimated average annual generation of 38.1 gigawatts-hours.

Applicant Contact: Mr. Jeffrey M. Auser, Brookfield Renewable Power, 200 Donald Lynch Boulevard, Suite 300, Marlborough, MA 01752, phone (508) 251–7716.

FERC Contact: Michael Spencer, (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.*

Enter the docket number (P–12693) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–25869 Filed 10–27–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13531–000]

Hydrodynamics, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

October 21, 2009.

On July 7, 2009, Hydrodynamics, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the

Federal Power Act, proposing to study the feasibility of the East Rosebud Hydro Project, which would be located on East Rosebud Creek, in Carbon County, Montana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A new 8-foot-high, 100-foot-long concrete diversion dam; (2) a new 7-foot-wide, 30-foot-long intake extending from the right side of the dam; (3) a new 42-inch-diameter, 2.2-mile-long steel penstock; (4) a new powerhouse containing one generating unit with an installed capacity of 6 megawatts; (5) a new tailrace discharging flows into East Rosebud Creek; (6) a new substation; (7) a new 50-kilovolt, 3.6-mile-long transmission line; and (8) appurtenant facilities. The proposed project would have an average annual generation of 40 gigawatt-hours.

Applicant Contact: Ben Singer, Project Manager, Hydrodynamics, Inc., P.O. Box 1136, Bozeman, MT 59771; phone: (406) 587–5086.

FERC Contact: Dianne Rodman, (202) 502–6077.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''eFiling'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.'' For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*; call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at: *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13531) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–25870 Filed 10–27–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Panel Member List for Hydropower Licensing Study Dispute Resolution; Notice Requesting Applications for Panel Member List for Hydropower Licensing Study Dispute Resolution

October 20, 2009.

This notice requests applications from those interested in being listed as potential panel members to assist in the Federal Energy Regulatory Commission's (Commission) study dispute resolution process for the integrated licensing process of hydropower projects.

Background

The Commission's integrated licensing process (ILP) regulations pertaining to hydroelectric licensing under the Federal Power Act encourages informal resolution of study disagreements. In cases where this is not successful, a formal study dispute resolution process is available for state and federal agencies or Indian tribes with mandatory conditioning authority.[1]

The ILP provides that the disputed study must be submitted to a dispute resolution panel consisting of a person from Commission staff, a person from the agency or Indian tribe referring the dispute to the Commission, and a third person selected by the other two panelists from a pre-established list of persons with expertise in the disputed resource area.[2] The third panel member (TPM) will serve without compensation, except for certain allowable travel expenses to be borne by the Commission (31 CFR 301).

The role of the panel members is to make a finding, with respect to each disputed study request, on the extent to which each study criteria set forth in the regulations is or is not met,[3] and why. The panel will then make a recommendation to the Director of the Office of Energy Projects based on the panel's findings.

TPMs can only be selected from a list of qualified persons (TPM List) that is developed and maintained by the Commission. This notice seeks additional members for the TPM list, which was originally compiled in 2004. Current members of the TPM list do not need to reapply. Each qualified panel member will be listed by area(s) and sub-area(s) of technical expertise, for example Fisheries Resources—instream flow. The TPM list will be available to the public on the Commission's Web site. All individuals submitting their applications to the Commission for consideration must meet the Commission's qualifications.

Application Contents

The applicant should describe in detail his/her qualifications in items 1–4 listed below.

1. Technical expertise, including education and experience in each resource area and sub-area for which the applicant wishes to be considered:

- Aquatic Resources
  - water quality
  - instream flows
  - fish passage
  - species specialists
    1. bull trout
    2. pacific salmon
    3. Atlantic salmon and cluepeids
    4. bass
    5. lamprey
    6. sturgeon
  - macroinvertebrates
  - threatened and endangered species
  - general
- Terrestrial Resources
  - wildlife biology
  - botany
  - wetlands ecology
  - threatened and endangered species
  - general
- Cultural Resources
  - architectural history
  - archeology
  - Indian tribes
- Recreational Resources
  - whitewater boating
  - instream flows
  - general
- Land use
  - shoreline management
  - general
- Aesthetics
  - noise
  - dark sky/nighttime artificial lighting
  - aesthetic instream flows
  - general
- Geology
  - geomorphology
  - erosion

[1] See § 5.14 of the final rule, which may be viewed on the Commission's Web site at *http://www.access.gpo.gov/nara/cfr/waisidx_06/18cfr5_06.html.*

[2] These persons must not be otherwise involved with the proceeding.

[3] See § 5.9 of the final rule.

- ○ general
- Socio-economics
- Engineering
  - ○ civil engineering
  - □ hydrology
  - □ structural
  - ○ hydraulic engineering
  - ○ electrical engineering
  - ○ general

2. Knowledge of the effects of construction and operation of hydroelectric projects.

3. Working knowledge of laws relevant to expertise, such as: the Fish and Wildlife Coordination Act, the Endangered Species Act, the Clean Water Act, the Coastal Zone Management Act, the Wild and Scenic Rivers Act, the Federal Power Act, or other applicable laws.

4. Ability to promote constructive communication about a disputed study.

How To Submit Applications

Applicants must submit their applications along with the names and contact information of three references. Applications will be evaluated as they are received, and each applicant will be individually notified of the Commission's decision.

Dates: The application period closes on February 15, 2010. Additional future application periods may be announced by the Commission as needed.

Addresses: Applications must be filed electronically via the Internet. See the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. Applications should reference ''Docket No. AD04–4–001, NOTICE REQUESTING APPLICATIONS FOR PANEL MEMBER LIST FOR HYDROPOWER LICENSING STUDY DISPUTE RESOLUTION''.

Other Information: Requests submitted must be in Word, Times New Roman 13 pt. font, and must not be longer than ten pages in length. Complete individual contact information must be provided, as formal interviews may be conducted either face to face or via teleconference as necessary prior to establishing the TPM List.

For Further Information Contact: David Turner, Federal Energy Regulatory Commission, Office of Energy Projects, 888 First Street, NE., Washington, DC 20426, (202) 502–6091, *David.Turner@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–25871 Filed 10–27–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8974–3]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by the American Nurses Association, Chesapeake Bay Foundation, Inc., Conservation Law Foundation, Environment America, Environmental Defense Fund, Izaak Walton League of America, Natural Resources Council of Maine, Natural Resources Defense Council, Physicians for Social Responsibility, Sierra Club, The Ohio Environmental Council, and Waterkeeper Alliance, Inc. (collectively ''Plaintiffs'') in the United States District Court for the District of Columbia: *American Nurses Association, et al.* v. *Jackson,* No. 1:08–cv–02198 (RMC) (D. DC). On December 18, 2008, Plaintiffs filed a complaint alleging that EPA failed to perform a non-discretionary duty to promulgate final maximum achievable control technology emissions standards for hazardous air pollutants from coal- and oil-fired electric utility steam generating units (''EGUs or power plants''), pursuant to CAA section 112(d), by the statutorily-mandated deadline. Under the terms of the proposed consent decree, EPA shall, no later than March 16, 2011, sign for publication in the **Federal Register** a notice of proposed rulemaking setting forth EPA's proposed emission standards for coal- and oil-fired EGUs pursuant to CAA section 112(d). In addition, EPA shall, no later than November 16, 2011, sign for publication in the **Federal Register** a notice of final rulemaking setting forth EPA's final emission standards for coal- and oil-fired EGUs pursuant to CAA section 112(d).

DATES: Written comments on the proposed consent decree must be received by *November 27, 2009.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2009–0764, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Paul Versace, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–0219; fax number (202) 564–5603; e-mail address: *versace.paul@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

This proposed consent decree would settle the complaint filed by Plaintiffs for EPA's alleged failure to promulgate final maximum achievable control technology emissions standards for hazardous air pollutants from coal- and oil-fired electric utility steam generating units (''EGUs or power plants''), pursuant to CAA section 112(d), by the statutorily mandated deadline. Under the terms of the proposed consent decree, EPA shall, no later than March 16, 2011, sign for publication in the **Federal Register** a notice of proposed rulemaking setting forth EPA's proposed emission standards for coal- and oil-fired EGUs pursuant to CAA section 112(d). In addition, EPA shall, no later than November 16, 2011, sign for publication in the Federal a notice of final rulemaking setting forth EPA's final emission standards for coal- and oil-fired EGUs pursuant to CAA section 112(d). The proposed consent decree also provides that, no later than 5 business days after signing both the notice of proposed rulemaking and the notice of final rulemaking, EPA shall deliver such notices to the Office of the Federal Register for prompt publication.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent

with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2009–0764) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: October 22, 2009.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E9–25992 Filed 10–27–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8974–7]

EPA Science Advisory Board Staff Office; Request for Nominations of Experts for the Clean Air Scientific Advisory Committee (CASAC) Lead Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office is announcing the formation of the Clean Air Scientific Advisory Committee (CASAC) Lead Review Panel. The SAB Staff Office is soliciting public nominations for this Panel.

DATES: Nominations should be submitted by November 18, 2009 per instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Request for Nominations may contact Mr. Aaron Yeow, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 343–9878; by fax at (202) 233–0643; or via e-mail at *yeow.aaron@epa.gov.* General information concerning the CASAC or the EPA Science Advisory Board can be found on the EPA SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The Clean Air Scientific Advisory Committee (CASAC) was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. CASAC provides advice, information and recommendations on the scientific and technical aspects of air quality criteria and National Ambient Air Quality Standards (NAAQS) under sections 108 and 109 of the Act. The CASAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App.

Section 109(d)(1) of the Clean Air Act (CAA) requires that EPA periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six ''criteria'' air pollutants, including lead. With the release of the final rule for the Lead NAAQS on October 15, 2008 and its subsequent publication in the **Federal Register** (73 FR 66964) on November 12, 2008, the Agency has completed its most recent review of the NAAQS for lead. EPA formed the CASAC Lead Review Panel that supported EPA's 2005–2008 Lead

NAAQS review in February 2006. Information about EPA's 2005–2008 Lead NAAQS Review and the CASAC Lead Review Panel's advice can be found on the CASAC Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/WebProjectsbyTopicCASAC!OpenView.*

This **Federal Register** notice seeks nominations for subject matter experts to serve on a new CASAC Lead Review Panel for the next review cycle of the Lead NAAQS that will begin in fiscal year (FY) 2010. The Panel will be charged with reviewing EPA's technical and policy assessments that support the Agency's review of the NAAQS for lead, including drafts of the Integrated Review Plan, Integrated Science Assessment, Risk/Exposure Assessment, Policy Assessment, and Rulemaking. The CASAC Lead Review Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Request for Nominations: The SAB Staff Office is requesting nominations of nationally recognized experts with expertise in one or more of the following areas, particularly with respect to lead: Atmospheric sciences; fate and transport; exposure assessment; toxicology; biokinetic modeling; epidemiology; risk assessment; biostatistics; ecology; and air quality.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals for possible service on the CASAC Lead Review Panel in the areas of expertise described above. Nominations should be submitted in electronic format (which is preferred over hard copy) following the instructions for ''Nominating Experts to Advisory Panels and Ad Hoc Committees Being Formed'' provided on the SAB Web site. The instructions can be accessed through the ''Nomination of Experts'' link on the blue navigational bar on the SAB Web site at *http://www.epa.gov/sab.* To receive full consideration, nominations should include all of the information requested.

EPA's SAB Staff Office requests: Contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's curriculum vita; sources of recent grants and/or contracts; and a biographical sketch of the nominee indicating current position, educational background, research activities, and recent service on other national advisory committees or national professional organizations.

Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Mr. Aaron Yeow, DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than November 18, 2009. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

The EPA SAB Staff Office will acknowledge receipt of nominations. The names and biosketches of qualified nominees identified by respondents to the **Federal Register** notice and additional experts identified by the SAB Staff will be posted on the SAB Web site at *http://www.epa.gov/sab.* Public comments on this ''Short List'' of candidates will be accepted for 21 calendar days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office, a balanced subcommittee or review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In establishing the CASAC Lead Review Panel, the SAB Staff Office will consider public comments on the ''Short List'' of candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for Panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; and (e) skills working in committees, subcommittees and advisory panels; and, for the Panel as a whole, (f) diversity of, and balance among scientific expertise and viewpoints.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address *http://www.epa.gov/sab/pdf/epaform3110–48.pdf.*

The approved policy under which the EPA SAB Office selects subcommittees and review panels is described in the following document: *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA–SAB–EC–02–010), which is posted on the SAB Web site at *http://www.epa.gov/sab/pdf/ec02010.pdf.*

Dated: October 22, 2009.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E9–25987 Filed 10–27–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

October 23, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comments on this information collection should submit comments on December 28, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Judith B. Herman, Federal Communications Commission (FCC). To submit your PRA comments by e–mail send then to: PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, OMD, 202–418–0214. For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Judith B. Herman, 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No: 3060–0292.

Title: Part 69, Access Charges (Section 69.605, Reporting and distribution of Pool Access Revenues).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit.

Number of Respondents: 1,250 respondents; 15,000 responses.

Estimated Time Per Response: .75 hours.

Frequency of Response: Monthly and annual reporting requirements and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 11,250 hours (1,250 respondents x 12 reports per year = 11,250 hours.)

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Need and Uses: The Commission is requesting an extension (no change in the reporting and/or third party disclosure requirements) in order to obtain the full three year clearance from the Office of Management and Budget (OMB). There is no change in the Commission's estimates.

Part 69 of the Commission's rules and regulations establishes the rules for access charges for interstate or foreign access provided by telephone companies on or after January 1, 1984. Part 69 essentially consists of rules or the procedures for the computation of access charges which are not information collections as defined by 5 CFR 1320 (OMB's regulations). Any reporting or disclosure occurs in connection with particular tariff filings and other reporting requirements with the FCC, National Exchange Carrier Association (NECA), or state commissions or with records maintained in accordance to the Uniform System of Accounts (USOA).

The information is used to compute charges in tariffs for access service (or origination and termination) and to compute revenue pool distributions. Neither process could be implemented without the information.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–25948 Filed 10–27–09; 8:45 am]

BILLING CODE 6712-01-S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

October 23, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comments on this information collection should submit comments on December 28, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Judith B. Herman, Federal Communications Commission (FCC). To submit your PRA comments by e–mail send then to: PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, OMD, 202–418–0214. For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Judith B. Herman, OMD, 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No: 3060–0952

Title: Proposed Demographic Information and Notifications, Second Further Notice of Proposed Rulemaking (NPRM), CC Docket No. 98–147 and the Fifth NPRM in CC Docket No. 96–98.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit.

Number of Respondents: 1,400 respondents; 1,400 responses.

Estimated Time Per Response: 2 hours (2 filings per year).

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Mandatory.

Total Annual Burden: 5,600 hours.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit confidential information. Any respondent who submits information to the Commission that they believe is confidential may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Need and Uses: The Commission is submitting this expiring information collection to the Office of Management and Budget (OMB) as an extension (no change in the reporting and/or third party disclosure requirements) in order to obtain the full three year clearance from them. There is no change in the Commission's burden estimates.

The proposed requirements implement section 706 of the Communications Act of 1934, as amended, to promote deployment of advanced services without significantly degrading the performance of other services. In CC Docket No. 98–147, the Commission solicited comment on whether requesting carriers should receive demographic and other information from ILECs to determine

whether they wish to collocate in particular remote terminals. In CC Docket No. 96–98, the Commission sought comment on whether ILECs should provide certain notifications to competing carriers.

This proposed collection is used by the Commission, state commissions, and competitive carriers to facilitate the deployment of advanced services and other telecommunications services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–25920 Filed 10–27–09; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

October 23, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comments on this information collection should submit comments on December 28, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Judith B. Herman, Federal Communications Commission (FCC). To submit your PRA comments by e–mail send then to: PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, OMD, 202–418–0214. For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Judith B. Herman, 202–418–0214].

SUPPLEMENTARY INFORMATION:

OMB Control No: 3060–0775.

Title: Section 64.1903, Obligations of All Incumbent Local Exchange Carriers (LECs).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit.

Number of Respondents: 10 respondents; 10 responses.

Estimated Time Per Response: 6,056 hours.

Frequency of Response: Recordkeeping Requirement.

Obligation to Respond: Mandatory.

Total Annual Burden: 60,560 hours.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission. This is a recordkeeping requirement.

Need and Uses: The Commission is requesting an extension (no change in the recordkeeping requirement) in order to obtain the full three year clearance from the Office of Management and Budget (OMB). There is no change in the estimated number of respondents/responses, burden hours and annual costs.

In CC Docket Nos. 96–149 and 96–61, the Commission imposed recordkeeping requirements on independent local exchange carriers (LECs). Independent LECs wishing to offer international, Interexchange services must comply with the separate affiliate requirements of the Competitive Carrier Fifth Report and Order in order to do so. One of these requirements is that the independent LEC's international, Interexchange affiliate must maintain books of account separate from such LEC's local exchange and other activities. This regulation does not require that the affiliate maintain books of account that comply with the Commission's Part 32 rules; rather, it refers to the fact that as a separate legal entity, the international, interexchange affiliate must maintain its own books of account in the ordinary course of its business.

This recordkeeping requirement is used by the Commission to ensure that independent LECs providing international, interexchange services through a separate affiliate are in compliance with the Communications Act of 1934, as amended, and with Commission policies and regulations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–25919 Filed 10–27–09; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Codification of Accounting and Financial Reporting Standards Contained in the AICPA Statements on Auditing Standards

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in April, 2004, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has released the Exposure Draft on Subsequent Events: Codification of Accounting and Financial Reporting Standards Contained in the AICPA Statements on Auditing Standards.

The American Institute of Certified Public Accountants' (AICPA) Statements on Auditing Standards (SAS) AU section 560, Subsequent Events, includes accounting and financial reporting guidance that is not discussed in the authoritative literature that establishes accounting principles. The objective of the proposed Statement is to incorporate that guidance into the authoritative literature of the FASAB.

The Exposure Draft is available on the FASAB home page *http://www.fasab.gov/exposure.html.* Copies can be obtained by contacting FASAB at (202) 512–7350.

Respondents are encouraged to comment on any part of the exposure draft. Written comments are requested by December 28, 2009, and should be sent to: Wendy M. Payne, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Wendy Payne, Executive Director, at (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: October 23, 2009.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. E9–25998 Filed 10–27–09; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 12, 2009.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Ronald R. Reed, St. Clair, Michigan; to retain voting shares of Michigan Community Bancorp, Ltd., and thereby indirectly retain voting shares of Lakeside Community Bank, both of Sterling Heights, Michigan.

Board of Governors of the Federal Reserve System, October 23, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–25904 Filed 10–27–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011383–043.

Title: Venezuelan Discussion Agreement.

Parties: Hamburg-Süd, Seaboard Marine Ltd., King Ocean Service de Venezuela, and SeaFreight Line, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would add Mediterranean Shipping Company S.A. as a party to the agreement.

Agreement No.: 011666–004.

Title: West Coast North America/Pacific Islands Vessel Sharing Agreement.

Parties: Hamburg-Süd and Polynesia Line Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment reduces the required notice to resign from the agreement.

Agreement No.: 011722–004.

Title: New World Alliance/Maersk Line Slot Exchange Agreement.

Parties: A.P. Moller Maersk A/S; American President Lines, Ltd.; APL Co. PTE Ltd.; Mitsui O.S.K. Lines, Ltd., and Hyundai Merchant Marine Co., Ltd.

Filing Party: Wayne R. Rohde, Esquire; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment would add the U.S. West Coast to the geographic scope of the agreement, revise vessel strings and allocations, and shorten the notice required to terminate the agreement.

By Order of the Federal Maritime Commission.

Dated: October 23, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–25982 Filed 10–27–09; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Secure Freight Systems (U.S.A.), Inc., 27438 237th Pl., SE., Maple Valley, WA 98038. Officers: Becky Hibbert, Secretary (Qualifying Individual), Gordon Lam, President.

VGO International Freight, Inc., 2707 East Valley Blvd., Ste. 311, West Covina, CA 91792, Officers: Patrick Pak Fun Chui, Vice President (Qualifying Individual), Kit Y. Tsui, President.

Wheelsky Logistics, Inc., 14515 E. Don Julian Road, City of Industry, CA 91746, Officer: Heng (Alex) J. Huang, Vice President (Qualifying Individual).

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Maze Express, LLC, 7031 Albatross Drive, Buena Park, CA 90620, Officer: Bang (Barry) Nguyen, Member/Manager (Qualifying Individual).

Aprile USA, Inc. dba Allied Seafreight Line, 1370 Broadway, Suite 1006, New York, NY 10018, Officer: Satish Arora, Asst. Secretary (Qualifying Individual).

Glodex, Corp., 7235 NW. 54th Street, Miami, FL 33166, Officer: Janete Rondon, President (Qualifying Individual).

Chaker Inc. dba Marina Line dba Folk Shipping Co., 2614 Treeview Drive, Arlington, TX 76016, Officers: Tarek Abdallah, President (Qualifying Individual), Ziad Abdallah, Vice President.

New K.S.A.I., Inc. dba KSA America Inc. dba KSA America Line, 3109 Lomita Blvd., Torrance, CA 90505, Officer: Daniel Benoit, Vice President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Application

Oceanland Service Inc., 8054 E. Garvey Ave., Ste. 200, Rosemead, CA 91770, Officer: Qiling Wu, President (Qualifying Individual).

Dated: October 23, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–25962 Filed 10–27–09; 8:45 am]

BILLING CODE 4730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 013868N.
Name: Cruz International, Inc.
Address: 2206 Saxon Street, Tampa, FL 33605.
Date Revoked: September 11, 2009.
Reason: Failed to maintain a valid bond.

License Number: 019052N.
Name: Deans & Associate Freight System Inc.
Address: 225–10 Merrick Blvd., Laurelton, NY 11413.
Date Revoked: September 27, 2009.
Reason: Failed to maintain a valid bond.

License Number: 019117F.
Name: East-West CFS, Inc.
Address: 14821 Northam Street, La Mirada, CA 90638.
Date Revoked: September 20, 2009.
Reason: Failed to maintain a valid bond.

License Number: 020780N.
Name: Kevin Jung dba US Global Logistics.
Address: 540 S. Catalina Street, Ste. 209, Los Angeles, CA 90020.
Date Revoked: September 26, 2009.
Reason: Failed to maintain a valid bond.

License Number: 004474N.
Name: Logistics Transportation Services, Inc.
Address: 23171 Mills Road, Porter, TX 77365.
Date Revoked: September 29, 2009.
Reason: Surrendered license voluntarily.

License Number: 017140N.
Name: Meridian Containers (USA) Ltd.
Address: 47 Raritan Ave., Ste. B, Highland Park, NJ 08904.
Date Revoked: September 19, 2009.
Reason: Failed to maintain a valid bond.

License Number: 021775F.
Name: Prologistics, Inc.
Address: 9715 Carnegie Ave., El Paso, TX 79925.
Date Revoked: September 23, 2009.
Reason: Failed to maintain a valid bond.

License Number: 019125F.
Name: Monumental Shipping & Moving Corp.
Address: 103–10 Astoria Blvd., E. Elmhurst, NY 11369.
Date Revoked: September 28, 2009.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E9–25961 Filed 10–27–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 09–07]

World Chance Logistics (Hong Kong), Ltd. and Yu, Chi Shing, a.k.a. Johnny Yu—Possible Violations of Section 10 of the Shipping Act of 1984; Order of Investigation and Hearing

World Chance Logistics (Hong Kong), Ltd., (''World Chance'') is a foreign based tariffed and bonded non-vessel-operating common carrier (''NVOCC'') registered with the Federal Maritime Commission (''Commission'') as Org. No. 018712. World Chance is located at #8 Des Voeux Road West, Rms. 1401–1402, Hong Kong, China. Yu, Chi Shing, a.k.a. Johnny Yu (''Mr. Yu'') is the company's sole shareholder and chief executive officer.

Based on evidence available to the Commission, it appears that World Chance and Mr. Yu may have permitted unrelated shippers of pyrotechnics to have direct access to the rates in World Chance's service contracts. Moreover, it also appears that World Chance and Mr. Yu may have provided rates and charges to pyrotechnics shippers which were not in accordance with the rates and charges contained in World Chance's tariff.

Additionally, in 2005, Mr. Yu incorporated Fireworks Logistics Association Ltd. (''FLA'') as a ''private limited company'' in Hong Kong. FLA, however, does not appear to have a separate legal identity, and lists World Chance's Hong Kong address as its own and uses World Chance's telephone and fax numbers and its email account. From the evidence developed, it appears that by entering into service contracts in FLA's name, World Chance and Mr. Yu may have utilized FLA as an unfair device or means to obtain lower rates and to receive volume incentive payments not otherwise applicable.

Section 10(a)(1) of the 1984 Act, 46 U.S.C. 41102(a) prohibits any person from knowingly and willfully obtaining or attempting to obtain ocean transportation of property at less than the otherwise applicable rates or charges ''by means of false billing, false classification, false weighing, false report of weight, false measurement, or any other unjust or unfair device or means * * *.'' Section 10(b)(1) of the 1984 Act, 46 U.S.C. 41104(1), prohibits a carrier from allowing any person to obtain transportation of property at less than the rates and charges in the carrier's tariff or filed contracts ''by means of false billing, false classification * * * or by any other unjust or unfair device or means.'' Section 10(b)(2) of the 1984 Act, 46 U.S.C. 41104(2), prohibits providing service in the liner trades ''not in accordance with'' the rates and charges published in a tariff or filed in an NVOCC service arrangement.

Pursuant to section 13 of the 1984 Act, 46 U.S.C. 41109, a party is subject to a civil penalty not exceeding $5,000 for each violation unless the violation was willfully and knowingly committed, in which case the amount of the civil penalty may not exceed $25,000 for each violation.[1]

Now therefore, it is ordered, that pursuant to sections 10 and 11 of the 1984 Act, 46 U.S.C. 41102(a), and 41104(1) and (2), an investigation is instituted to determine:

(1) Whether World Chance Logistics (Hong Kong), Ltd. and/or Yu, Chi Shing, a.k.a. Johnny Yu, violated section 10(a)(1) of the 1984 Act, 46 U.S.C. 41102(a), by utilizing Fireworks Logistics Association, Ltd. as an unfair device or means to obtain lower rates and receive volume incentive payments not otherwise applicable;

(2) Whether World Chance Logistics (Hong Kong), Ltd. and/or Yu, Chi Shing, a.k.a. Johnny Yu, violated section 10(b)(1) of the 1984 Act, 46 U.S.C. 41104(1), by allowing persons to obtain transportation of property at less than the rates and charges in the carrier's tariff or filed contracts ''by means of false billing, false classification * * * or by any other unjust or unfair device or means;''

(3) Whether World Chance Logistics (Hong Kong), Ltd. and/or Yu, Chi Shing,

[1] Effective July 31, 2009, the maximum levels of civil penalties were adjusted for inflation to $8,000 and $40,000, respectively. For the period of violations discussed in this memorandum prior to July 31, 2009, the maximum level of civil penalties was $6,000 and $30,000, respectively.

a.k.a. Johnny Yu, violated section 10(b)(2) of the 1984 Act. 46 U.S.C. 41104(2), by providing service in the liner trades ''not in accordance with'' the rates and charges published in a tariff or filed in an NVOCC service arrangement;

(4) Whether, in the event violations of section 10 of the 1984 Act are found, civil penalties should be assessed against World Chance Logistics (Hong Kong), Ltd. and/or Yu, Chi Shing, a.k.a. Johnny Yu and, if so, the amount of the penalties to be assessed; and

(5) Whether, in the event violations are found, appropriate cease and desist orders should be issued against World Chance Logistics (Hong Kong), Ltd. and/or Yu, Chi Shing, a.k.a. Johnny Yu.

It is further ordered, that a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding Administrative Law Judge only after consideration has been given by the parties and the presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, that World Chance Logistics (Hong Kong), Ltd. and Yu, Chi Shing, a.k.a. Johnny Yu are designated as Respondents in this proceeding;

It is further ordered, that the Commission's Bureau of Enforcement is designated a party to this proceeding;

It is further ordered, that notice of this Order be published in the **Federal Register**, and a copy be served on the parties of record;

It is further ordered, that other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, that all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, that all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record; and

It is further ordered, that in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by October 22, 2010 and the final decision of the Commission shall be issued by February 22, 2011.

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. E9–25877 Filed 10–27–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: Attitudes Toward Electronic Health Information Exchange and Associated Privacy and Security Aspects—OMB No. 0990–NEW–Office of the National Coordinator for Health Information Technology.

Abstract: Electronic health information exchange promises an array of potential benefits for individuals and the U.S. health care system through improved health care quality, safety, and efficiency. At the same time, this environment also poses new challenges and opportunities for protecting health information. Health information technology and electronic health information exchange may also provide individuals with new, more effective methods to engage with their health care providers and affect how their health information may be exchanged. Based on findings from a comprehensive literature review, little is known about individuals' attitudes toward electronic health information exchange and the extent to which they are interested in determining by whom and how their health information is exchanged. The proposed information collection will permit us to better understand individuals' attitudes toward electronic health information exchange and its associated privacy and security aspects as well as inform policy and programmatic objectives.

The Office of the National Coordinator for Health Information Technology (ONC) is proposing to conduct a nationwide survey which will use computer-assisted telephone interviews (CATI) to interview a representative sample of the general U.S. population. Data collection will take place over the course of eight weeks. The data will be analyzed using statistical methods and a draft report will be prepared. ONC will hold a web seminar prior to the publication of the final report to convey the findings to the general public. A final report will be posted on *http://healthit.hhs.gov* which will include the results and analysis.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Screening Form	Non-Participating Household (Screened).	22,845	1	2/60	761
Interview Form	Eligible Household (Completes Survey).	2,570	1	14/60	600
Total					1361

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E9–25935 Filed 10–27–09; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0937–0166; 30-day notice]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: HHS 42 CFR part 50, subpart B; Sterilization of Persons in Federally Assisted Family Planning Projects—OMB No. 0937–0166-Revision-Office of Population Affairs—Office of Family Planning.

Abstract: This is a request for revision of a currently approved collection for the disclosure and record-keeping requirements codified at 42 CFR part 50, subpart B (''Sterilization of Persons in Federally Assisted Family Planning Projects''). The consent form solicits information to assure voluntary and informed consent to persons undergoing sterilization in programs of health services which are supported by Federal financial assistance administered by the Public Health Service (PHS). The form provides additional procedural protections to individuals undergoing sterilization. In order to obtain informed consent, the regulation requires that programs use either the form that is appended to the PHS regulation or another consent form approved by the Secretary.

In 2003, the sterilization consent form was revised to conform to OMB government-wide standards for the collection of race/ethnicity data and to incorporate the PRA burden statement as part of the consent form. The current form has been updated to conform to the changed name of a federal entitlement program. The program, Aid to Families with Dependent Children (AFDC), utilized by low-income families with dependent children who need federal assistance, has been replaced by a different program with similar aims, Temporary Assistance for Needy Families (TANF). Consequently, the reference to AFDC in the first paragraph has been replaced with a reference to TANF.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response	Total hours
Citizens Seeking Sterilization	Information Disclosure for Sterilization Consent Form.	100,000	1	1	100,000
Citizens Seeking Sterilization	Record-keeping for Sterilization Consent Form.	100,000	1	15/60	25,000
Total					125,000

Seleda Perryman,
Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.
[FR Doc. E9–25936 Filed 10–27–09; 8:45 am]
BILLING CODE 4150–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0511]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medicated Feed Mill License Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the medicated feed mill licensing applications.

DATES: Submit written or electronic comments on the collection of information by December 28, 2009.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medicated Feed Mill License Application—21 CFR Part 515 (OMB Control Number 0910–0337)—Extension

The Animal Drug Availability Act (ADAA) of October 9, 1996, amended section 512 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b) to replace the system for the approval of specific medicated feed with a general licensing system for feed mills. Before passage of the ADAA, medicated feed manufacturers were required to obtain approval of Medicated Feed Applications (MFAs), in order to manufacture certain types of medicated feeds. An individual approved MFA was required for each and every applicable medicated feed. The ADAA streamlined the paperwork process for gaining approval to manufacture medicated feeds by replacing the MFA system with a facility license for each medicated feed manufacturing facility.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
515.10(b)	20	1	20	0.25	5
515.11(b)	75	1	75	0.25	18.75
515.23	40	1	40	0.25	10
515.30(c)	0.15	1	0.15	24	3.6
Total Burden Hours					37.35

[1] There are no capital or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
510.305	1,070	1	1,070	0.03	32.10

[1] There are no capital or operating and maintenance costs associated with this collection of information.

The estimated annual reporting burden on industry is 37.35 hours as shown in table 1 of this document. Industry estimates it takes about 1/4 hour to submit the application. We estimate 135 original and supplemental applications, and voluntary revocations for a total of 33.75 hours (135 submissions x 1/4 hour). An additional 3.6 hours is added for the rare notice of opportunity for a hearing to not approve or revoke an application. Finally, we estimate 30 hours for maintaining and retrieving labels as required by 21 CFR 510.305 and shown in table 2 of this document. We estimated 0.03 hours for each of the approximately 1,000 licensees. Thus, the total annual burden for reporting and recordkeeping requirements is estimated to be 67.35 hours.

Dated: October 20, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–25915 Filed 10–27–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0215]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Recordkeeping Requirements for Microbiological Testing and Corrective Measures for Bottled Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 27, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–NEW and title ''Recordkeeping Requirements for Microbiological Testing and Corrective Measures for Bottled Water.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794, e-mail: *JonnaLynn.Capezzuto@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Recordkeeping Requirements for Microbiological Testing and Corrective Measures for Bottled Water—21 CFR 129.35(a)(3)(i) and 129.80(g) and (h)

FDA has amended its bottled water regulations in parts 129 and 165 (21 CFR parts 129 and 165) by requiring that if any coliform organisms are detected in weekly total coliform testing of finished bottled water, followup testing must be conducted to determine whether any of the coliform organisms are *E. coli*. FDA also amended the adulteration provision of the bottled water standard (§ 165.110(d)) to indicate that finished product that tests positive for *E. coli* will be deemed adulterated under section 402(a)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(3)). In addition, FDA amended the Current Good Manufacturing Practices (CGMP) regulations for bottled water in part 129 by requiring that source water from other than a public water system (PWS) be tested at least weekly for total coliform. If any coliform organisms are detected in the source water, the bottled water manufacturers are required to determine whether any of the coliform organisms are *E. coli*. Source water found to contain *E. coli* is not considered water of a safe, sanitary quality and would be unsuitable for bottled water production. Before a bottler may use source water from a source that has tested positive for *E. coli*, a bottler must take appropriate measures to rectify or otherwise eliminate the cause of the contamination. A source previously found to contain *E. coli* will be considered negative for *E. coli* after five samples collected over a 24-hour period from the same sampling site are tested and found to be *E. coli* negative.

Description of Respondents: The respondents to this proposed information collection are domestic and foreign bottled water manufacturers that sell bottled water in the United States.

In the **Federal Register** of May 29, 2009 (74 FR 25752), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
§§ 129.35(a)(3)(i) and 129.80(h)	319 (bottlers subject to source water and finished product testing)	6	1,914	0.08	153
§§ 129.35(a)(3)(i) and 129.80(h)	2.5 (bottlers conducting secondary testing of source water)	5	12	0.08	1
§§ 129.35(a)(3)(i) and 129.80(h)	2.5 (bottlers rectifying contamination)	3	7.5	0.25	2
§ 129.80(g) and (h)	95 (bottlers testing finished product only)	3	285	0.08	23
Total Annual Burden					179

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The current CGMP regulations already reflect the time and associated recordkeeping costs for those bottlers that are required to conduct microbiological testing of their source water, as well as total coliform testing of their finished bottled water products. FDA therefore concludes that any additional burden and costs in recordkeeping based on the new testing requirements for source and finished bottled water are negligible. FDA estimates that the labor burden of keeping records of each test is about 5 minutes per test. FDA also requires followup testing of source water and finished bottled water products for *E. coli* when total coliform positives occur. FDA expects that 319 bottlers that use sources other than PWSs may find a total coliform positive sample about 3 times per year in source testing and about 3 times in finished product testing, for a total of 153 hours of recordkeeping. In addition to the 319 bottlers, about 95 bottlers that use PWSs may find a total coliform positive sample about 3 times per year in finished product testing, for a total of 23 hours of recordkeeping. Upon finding a total coliform positive sample, bottlers will then have to conduct a followup test for *E. coli*.

FDA expects that recordkeeping for the followup test for *E. coli* will also take about 5 minutes per test. As shown in table 1 of this document, FDA expects that 2.5 bottlers per year will have to carry out the additional *E. coli* testing, with a burden of 1 hour. These bottlers will also have to keep records about rectifying the source contamination, for a burden of 2 hours. For all expected total coliform testing, *E. coli* testing, and source rectification, FDA estimates a total burden of 179 hours. FDA bases its estimate on its experience with the current CGMP regulations.

Dated: October 20, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–25927 Filed 10–27–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; A Generic Submission for Formative Research, Pretesting, and Customer Satisfaction of NCI's Communication and Education Resources (NCI)

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: A Generic Submission For Formative Research, Pretesting, and Customer Satisfaction of NCI's Communication and Education Resources. *Type of Information Collection Request:* REVISION. *Need and Use of Information Collection:* In order to carry out NCI's legislative mandate to educate and disseminate information about cancer prevention, detection, diagnosis, and treatment to a wide variety of audiences and organizations (*e.g.,* cancer patients, their families, the general public, health providers, the media, voluntary groups, scientific and medical organizations), it is beneficial for NCI, through its Office of Communications and Education (OCE), to pretest NCI communications strategies, concepts, and messages while they are under development. This pretesting, or formative evaluation, helps ensure that the messages, communication materials, and information services created by NCI have the greatest capacity of being received, understood, and accepted by their target audiences. Since NCI's OCE also is responsible for the design, implementation, and evaluation of education programs over the entire cancer continuum, and management of NCI initiatives that address specific challenges in cancer research and treatment, it is also necessary to ensure that customers are satisfied with programs. This customer satisfaction research helps ensure the relevance, utility, and appropriateness of the many educational programs and products that OCE and NCI produce. OCE will use a variety of qualitative (focus groups, interviews) and quantitative (paper, phone, in-person, and Web surveys) methodologies to conduct this formative and customer satisfaction research, allowing NCI to: (1) Understand characteristics (attitudes, beliefs, and behaviors) of the intended target audience and use this information in the development of effective communication tools and strategies; (2) use a feedback loop to help refine, revise, and enhance messages, materials, products, and programs—ensuring that they have the greatest relevance, utility, appropriateness, and impact for/to target audiences; and (3) expend limited program resource dollars wisely and effectively. This package represents the combination of a currently approved generic submission, ''Pretesting of NCI's Office of Communications Messages,'' (OMB No. 0925–0046) and a formerly approved generic submission, ''Customer Satisfaction with Educational Programs and Products of the NCI'' (OMB No. 0925–0526).

Frequency of Response: On occasion. *Affected Public:* Individuals or households; Businesses or other for profit; Not-for-profit institutions; Federal Government; State, Local, or Tribal Government. *Type of Respondents:* Adult cancer patients; members of the public; health care professionals; researchers; organizational representatives. The table below outlines the estimated burden hours required for a three-year approval of this generic submission. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

TABLE 1—ESTIMATES FOR BURDEN HOURS FOR THREE YEARS

[Generic study]

Survey method	Total number of respondents	Frequency of response	Minutes/hour per response	Total burden hours
Focus Groups	900	1	90/60 (1.5)	1,350.00
Individual In-Depth Interviews (Typically longer than 15 minutes, includes Web site usability testing)	600	1	45/60 (.75)	450.00
Brief Interviews (Typically less than 5 minutes)	19,000	1	10/60 (.17)	3,166.67
Surveys (Web, phone, in-person, paper-and-pencil)	12,500	1	10/60 (.17)	2,083.33
Totals	33,000			7,050.00

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Nina Goodman, Senior Public Health Advisor, Office of Communications and Education (OCE), NCI, NIH, 6116 Executive Blvd., Suite 400, Rockville, MD 20892, call non-toll-free number 301–435–7789 or e-mail your request, including your address to: *goodmann@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: October 21, 2009.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. E9–25954 Filed 10–27–09; 8:45 am]

BILLING CODE 4101–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10191]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Parts C and D Universal Audit Guide; *Use:* Under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and implementing regulations at 42 CFR Parts 422 and 423 Medicare Part D plan sponsors and Medicare Advantage organizations are required to comply with all Medicare Parts C and D program requirements. 42 CFR 422.502 describes CMS' regulatory authority to evaluate, through inspection or other means, Medicare Advantage Part C organizations. These records include books, contracts, medical records, patient care documentation and other records that pertain to any aspect of services performed, reconciliation of benefit liabilities, and determination of amounts payable. 42 CFR 423.503 states that CMS must oversee a Part D plan sponsor's continued compliance with the requirements for a Part D plan sponsor. Section 423.514 states that the Part D plan sponsor must have an effective procedure to develop, compile, evaluate, and report to CMS, to its enrollees, and to the general public, at the times and in the manner that CMS requires, statistics regarding areas such as cost of operations, patterns of utilization availability, accessibility, and acceptability of services.

The rapid growth of these sponsoring organizations has forced CMS to update its current auditing strategy to ensure we continue to obtain meaningful audit results. As a result, CMS' audit strategy will reflect a move to more targeted, data-driven and risk-based audits. CMS will also focus on high-risk areas that have the greatest potential for beneficiary harm. The goal of the audits will be the earliest possible detection and correction of issues and improvement in quality and performance of Part D sponsors and Medicare Advantage organizations.

To accomplish these goals, we have combined all Part C and Part D audit elements into one universal guide which will also promote consistency, effectiveness and reduce financial and time burdens for both CMS and Medicare-contracting entities. Please refer to the crosswalk document for a list of changes. *Form Number:* CMS–10191 (OMB#: 0938–1000); *Frequency:* Reporting—Yearly; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 195; *Total Annual Responses:* 195; *Total Annual Hours:* 24,180. (For policy questions regarding this collection contact Laura Dash at 410–786–8623. For all other issues call 410–786–1326).

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *November 27, 2009.*

OMB, Office of Information and Regulatory Affairs, *Attention:* CMS Desk Officer, *Fax Number:* (202) 395–6974, *E-mail: OIRA_submission@omb.eop.gov.*

Dated: October 21, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–25993 Filed 10–27–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–10–09AX]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To

request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Survey of Long-Haul Truck Driver Injury and Health—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. The Occupational Safety and Health Act of 1970, Public Law 91–596 (Section 20[a][1]) authorizes NIOSH to conduct research to advance the health and safety of workers. In this capacity, NIOSH will conduct a national survey of long-haul truck drivers.

Truck drivers are at increased risk for numerous preventable diseases and health conditions; previous research suggests that truck drivers are at increased risk for lower back pain, heart disease, hypertension, stomach ulcers, and cancers of the bladder, lung, prostate, and stomach. Truck drivers also face extraordinary risk of on-the-job mortality. In 2007, the fatality rate for ''driver/sales workers and truck drivers'' was 28.2 per 100,000 workers, compared with a rate of 3.8 per 100,000 for all workers. Drivers of heavy and tractor-trailer trucks had more fatal work injuries than any other single occupation (822 deaths in 2007).

Truck drivers experience high rates of occupational injury and illness, but little is known about the prevalence of factors suspected to place them at increased risk. Information is needed on the role of occupation in driver health and on mechanisms of driver injuries. In evaluating the potential health effects of the 2005 hours-of-service ruling, the Federal Motor Carrier Safety Administration stated that due to a lack of evidence specific to trucking operations, information from different fields had to be adapted to a trucking environment. Research needs cited by stakeholders include detailed data on the prevalence of selected health conditions and risk factors among truck drivers, and data on working conditions, injury causes and outcomes, and health behaviors.

NIOSH has obtained input on plans for this survey through stakeholder meetings, a webinar, an Internet blog, and from comments received through NIOSH Docket 110 and during a focus group discussion with 7 truck drivers. The survey instrument has been reviewed by 6 subject matter experts and 9 cognitive interviews have been conducted using the survey instrument. Input received was used to guide development of the survey instrument and plans for survey implementation. Subjective data on understanding and phrasing of questions were collected during the focus group discussion and cognitive interviews.

The proposed national survey will be based upon a probability sample of truck stops. The survey will be conducted at locations along freight corridors in 5 geographic regions (Northeast, South, Great Lakes, Central, and West). The number of locations to be visited within each region will be related to the traffic load in that region. Eligible truck drivers stopping at selected truck stops will provide all survey data. The major objectives of the survey will be to: (1) Determine the prevalence of selected health conditions and risk factors; (2) characterize drivers' working conditions, occupational injuries, and health behaviors; (3) explore the associations among health status, individual risk factors, occupational injuries and occupational exposures related to work organization. The survey will eliminate significant gaps in occupational safety and health data for long-haul truck drivers. The results will assist regulatory agencies in focusing rulemaking, furnish industry and labor with safety and health information needed by their constituents, and stimulate future research and advocacy to benefit truck drivers.

The target population of drivers for this survey will be limited to drivers who: Have truck driving as their main job; drive a heavy truck (class 8 vehicle over 26,000 lbs. gross vehicle weight); sleep away from home at least one night per delivery run; and who have been a heavy truck driver 12 months or longer.

The study instrument will be interviewer-administered to approximately 2,400 eligible truck drivers at 50 truck stops. Individuals will first be asked a series of questions to determine if they are eligible to participate in the survey, followed by administration of the main interview. Respondents will not be asked to report names or any other identifying information.

The project supports the NIOSH surveillance function to advance the usefulness of surveillance information for the prevention of occupational injuries, illnesses, and hazards, and actively promoting the dissemination and use of NIOSH surveillance data and information. This survey will allow NIOSH to explore the inter-relationships among dimensions of health status, individual risk factors, occupational injuries, sleep disorders, and occupational exposures. It will also provide detailed demographic data on long-haul truck drivers, which have not been available previously, and could provide baseline data to inform future cohort and prospective studies.

NIOSH will use the information to calculate prevalence and customize safety and health interventions for long-haul truck drivers. Once the study is completed, results will be made available via various means. NIOSH expects to complete data collection no later than Fall of 2010. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total burden (in hours)
Truck Drivers	Screening Interview	3000	1	3/60	150

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total burden (in hours)
	Main Interview	2400	1	40/60	1600
Total					1750

Dated: October 22, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–25911 Filed 10–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–10–0017]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Application for Training (OMB No. 0920–0017 exp. 3/31/2010)—Revision—Office of Workforce and Career Development (OWCD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

OWCD requests an additional three years to continue CDC's and the Agency for Toxic Substances and Disease Registry's (ATSDR's) use of the training application forms described below.

CDC offers public health training activities to professionals worldwide. Employees of hospitals, universities, medical centers, laboratories, State and Federal agencies, and State and local health departments apply for training to learn up-to-date public health practices. CDC's training activities include laboratory training, classroom study, online training, and distance learning.

CDC uses training application forms to collect information necessary to manage and conduct training pertinent to the agency's mission. This information allows CDC to send confirmation of registration to participants, provide certificates of attendance or continuing education credits as proof of participants' attendance, and generate management reports to identify training needs, design courses, select location for courses, and evaluate programs.

CDC is accredited by six different continuing education (CE) organizations to award CE credit: (1) The International Association for Continuing Education and Training (IACET) to provide Continuing Education Units (CEUs), (2) the Accreditation Council for Continuing Medical Education (ACCME) to provide Continuing Medical Education credits (CME), (3) the American Nurses Credentialing Center (ANCC) to provide Continuing Nurse Education credits (CNE), (4) the National Commission for Health Education Credentialing (NCHEC) to award CHES credit, (5) the Accreditation Council for Pharmacy Education (ACPE) to provide continuing pharmacy credit, and (6) the American Association of Veterinary State Boards to award Registry of Approved Continuing Education (RACE) credit. The accrediting organizations require a method of tracking participants who complete an educational activity, and demographic data allows CDC to do so. Also, several of the organizations require a permanent record that includes the participant's name, address, and phone number, to facilitate retrieval of historical information about when a participant completed a course or several courses during a time period. This information provides the basis for a transcript or for determining whether a person is enrolled in more than one course. CDC uses the e-mail address to verify the participant's electronic request for transcripts, verify course certificates, and send confirmation a participant is registered for a course.

CDC uses the information on the training application forms request to (1) grant public health professionals the CE credits they need to maintain professional licenses and certifications, (2) create a transcript or summary of training at the participant's request, (3) generate management reports, and (4) maintain training statistics. Management reports help CDC identify training needs, design courses, select locations for courses, evaluate programs, and conduct impact analysis.

Tracking course attendance and meeting accrediting organizations' standards for reporting, require uniform standardized training application forms. The standardized data these forms request for laboratory training, classroom study, online training, and distance learning are not requested elsewhere. In other words, these forms do not duplicate requests for information from participants. Data are collected only once per course or once per new registration.

The annual burden table has been updated to reflect an increase in distance learning. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Forms	Respondent type	No. of respondents	No. of responses per respondent	Average burden per response (in hours)	Total burden hours
Application for Training	Laboratorians, Doctors, Nurses	74,000	1	5/60	6167
Total					6167

Dated: October 22, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–25910 Filed 10–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0355]

Draft Guidance for Industry and Reviewers on Structured Product Labeling Standard for Content of Labeling Technical Questions and Answers, Revision; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft revised guidance for industry and reviewers entitled ''SPL Standard for Content of Labeling Technical Qs & As.'' This draft guidance is intended to assist sponsors who submit the content of their product labeling to the Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research (CBER) using the Structured Product Labeling standard (SPL) in extensible markup language (XML). The draft guidance also provides information to CDER and CBER staff who review and manage that product information using electronic systems. This draft guidance is being revised to reflect technological changes and changes resulting from the requirement in the Food and Drug Administration Amendments Act of 2007 to submit drug establishment registration and drug listing information electronically.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit electronic or written comments on the draft guidance by December 28, 2009. Submit electronic or written comments on the collection of information by December 28, 2009.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002 or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management. All comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Lonnie Smith, Center for Drug Evaluation and Research (HFD–001), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–0011.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 11, 2003 (68 FR 69009), FDA published final regulations requiring that the content of labeling be submitted to FDA electronically for new drug applications (NDAs), abbreviated new drug applications (ANDAs), certain biologics license applications (BLAs), and annual reports (see 21 CFR 314.50(l), 314.94(d), 601.14(b), and 314.81(b), respectively) (the December 2003 regulations). The December 2003 regulations state that the content of labeling must be submitted to FDA electronically and ''in a form that FDA can process, review, and archive.''

Initially, CDER accepted electronic submissions of content of labeling in portable document format (PDF). Then, in September 2004, CDER announced that it would accept content of labeling in both PDF and SPL formats until the autumn of 2005. On October 21, 2005, CDER announced that effective October 31, 2005, CDER would no longer accept content of labeling submissions in PDF format and that applicants should use the SPL standard when submitting content of labeling to FDA in XML with original submissions, supplements, and annual reports. CBER made a similar announcement on July 11, 2008, which went into effect on October 15, 2008. On July 10, 2008, CDER, CBER, and the Center for Veterinary Medicine announced their intention to begin using the SPL standard for electronic drug establishment registration and drug product listing.

Since FDA began accepting content of labeling in SPL format for application submissions, we have received numerous questions about SPL submission requirements. Based on preliminary questions, and in an effort to provide easy access to common questions that were being raised, in December 2005 we published a final guidance for industry entitled ''SPL Standard for Content of Labeling Technical Qs and As.'' As a result of initial experience using the SPL format and as a result of changes to the system for receiving registration and listing information, FDA is revising its SPL Qs & As guidance to provide recommendations in response to additional technical questions. Because of the number of questions that have arisen as a result of the actions described in this section of the document, FDA is issuing this guidance as a draft to solicit input from the public on the recommendations.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on submitting content of labeling in the SPL format. It does not create or confer

any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, we are publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, we invite comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Draft Guidance for Industry and Reviewers on SPL Standard for Content of Labeling Technical Qs & As, Revision

In the December 2003 regulations, FDA calculated the burden hours (see section V ''Paperwork Reduction Act of 1995'') and the costs (see section VIII ''Analysis of Economic Impacts'') resulting from the final regulations requiring that the content of labeling be submitted to FDA electronically for NDAs, ANDAs, certain BLAs, and annual reports. The information collection resulting from the final rule is approved by OMB under Control Number 0910–0530. The burden hours and costs that were calculated in the final rule were based on the submission of the content of labeling in PDF. As discussed in section I of this notice and in the Background section of the draft guidance, CDER and CBER no longer accept content of labeling submissions in PDF and applicants should now use the SPL standard when submitting content of labeling in XML with original submissions, supplements, and annual reports. The burden hours and costs associated with making these submissions using the SPL standard are discussed in this section of the document.

We estimate that it should take applicants approximately 1.25 hours to convert the content of labeling from Word or PDF to SPL format. The main task involved in this conversion is copying the content from one document (Word or PDF) to another (SPL). Over the past few years, several enhancements have been made to SPL authoring software which significantly reduces the burden and time needed to generate well-formed SPL documents. SPL authors may now copy a paragraph from a Word or PDF document and paste the text into the appropriate section of an SPL document. In those cases where an SPL author needs to create a table, the table text may be copied from the Word or PDF document and pasted into each table cell in the SPL document, eliminating the need to retype any information. Enhancements have also been made to the software for conversion vendors. Conversion software vendors have designed tools that will import the Word version of the content of labeling and, within minutes, automatically generate the SPL document (a few formatting edits may have to be made).

Based on the number of content of labeling submissions received during 2006, 2007, and 2008, we estimate that approximately 5,000 content of labeling submissions are made with original submissions, supplements, and annual reports by approximately 450 applicants. Therefore, the total annual hours to convert the content of labeling from Word or PDF to SPL format would be approximately 6,250 hours. We note that in the future, applicants will not need to convert their content of labeling from Word or PDF to SPL, but will be able to prepare their content of labeling in SPL format.

Concerning costs, we have concluded that there are no capital costs or operating and maintenance costs associated with this collection of information. In May 2009, FDA issued a guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Drug Establishment Registration and Listing'' (the May 2009 guidance). The May 2009 guidance describes how to electronically create and submit SPL files using defined code sets and codes for establishment registration and drug listing information, including labeling. The information collection resulting from this guidance, discussed in the **Federal Register** of January 8, 2009 (74 FR 816) (the January 2009 notice), has been approved by OMB under Control Number 0910–0045. As discussed in the January 2009 notice, to create an SPL file and submit it to FDA, a registrant would need the following tools: A computer, appropriate software, access to the Internet, knowledge of terminology and standards, and access to FDA's electronic submission gateway (ESG). Registrants (and most individuals) have computers and Internet access available for their use. If a business does not have an available computer or access to the Internet, free use of computers and the Internet are usually available at public facilities, e.g., a community library. In addition, there should be no additional costs associated with obtaining the appropriate software. In 2008, FDA collaborated with GlobalSubmit to make available free SPL authoring software that SPL authors may utilize to create new SPL documents or edit previous versions. (Information on obtaining this software is explained in section IV.A of the guidance entitled ''Providing Regulatory Submissions in Electronic Format—Drug Establishment Registration and Listing.'') In addition to the software, FDA also provides technical assistance and other resources, code sets and codes, and data standards regarding SPL files.

After the SPL file is created, the registrant would upload the file through the ESG, as explained in the January 2009 notice. A digital certificate is needed to use the ESG. The digital certificate binds together the owner's name and a pair of electronic keys (a public key and a private key) that can be used to encrypt and sign documents. A fee of up to $20.00 is charged for the digital certificate and the registrant may need to renew the certificate not less than annually. We are not calculating this fee as a cost for the draft guidance because all applicants who submit content of labeling are also subject to the drug establishment registration and listing requirements and would have already acquired the digital certificate as a result of the May 2009 guidance on drug establishment registration and listing.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED REPORTING BURDEN[1]

Guidance	No. of Respondents	Frequency per Response	Total Responses	Hours per Response	Total Hours
Draft Guidance for Industry and Reviewers on SPL Standard for Content of Labeling Technical Qs & As, Revision	450	11.11	5,000	1.25	6,250

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, *http://www.fda.gov/cber/guidelines.htm*, or *http://www.regulations.gov*.

Dated: October 23, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–25940 Filed 10–27–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Science Advisory Board to the National Center for Toxicological Research Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Science Advisory Board (SAB) to the National Center for Toxicological Research (NCTR).

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 17, 2009, from 8:15 a.m. to 5 p.m. and on November 18, 2009, from 8:15 a.m. to 2 p.m.

Location: NCTR SAB Conference Room B–12, 3900 NCTR Dr., Jefferson, AR 72079.

Contact Person: Margaret Miller, Designated Federal Official (DFO), National Center for Toxicological Research (HFT–10), Food and Drug Administration, 5600 Fishers Lane, Room 9C–05, Rockville, MD 20857, 301–827–6693, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 301–451–2559. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On November 17, 2009, the NCTR Director will provide a Center-wide update on scientific endeavors and discuss prioritization, alignment, and the strategic focus of NCTR. The SAB will be presented with responses to the evaluations of the Division of Systems Toxicology and the Division of Genetic and Reproductive Toxicology. The evaluations were the product of an on-site review of the Division of Systems Toxicology in February 2009 and the Division of Genetic and Reproductive Toxicology in July 2009, and will address the issues raised and recommendations made by the site visit teams. On November 18, 2009, the SAB will be presented with the Division of Personalized Nutrition and Medicine site visit report. This report is the product of a site review of the Division of Personalized Nutrition and Medicine in August 2009 and will address the issues and recommendations made by the site visit teams.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: On November 17, 2009, from 8:15 a.m. to 5 p.m., and November 18, 2009, from 8:15 a.m. to 1 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 16, 2009. Oral presentations from the public will be scheduled November 17, 2009, between approximately 12:30 p.m. to 1:30 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 12, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 13, 2009.

Closed Committee Deliberations: On November 18, 2009, from approximately 1 p.m. to 2 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). This portion of the meeting will be closed to permit discussion of information

concerning individuals associated with the research programs at NCTR.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Margaret Miller (*Contact Person*) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 23, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–25941 Filed 10–27–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee, November 4, 2009, 8 a.m. to November 4, 2009, 5 p.m., National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892, which was published in the **Federal Register** on August 31, 2009, 74FR44860.

This meeting is amended to adjust the end time to 4 p.m. The meeting is open to the public.

Dated: October 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–25907 Filed 10–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; ''R13 Conference Grants.''

Date: November 20, 2009.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Yong Gao, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 2217, 6700B Rockledge Drive, Bethesda, MD 20892–7616, 301–443–8115, *gaol2@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 21, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–25902 Filed 10–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Biology of Neuroendocrine Peptides.

Date: December 1, 2009.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *ls38z@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 21, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–25879 Filed 10–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special

Emphasis Panel; Ancillary Studies in Immunomodulation Clinical Trials.

Date: November 17, 2009.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Paul A. Amstad, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–7098, *pamstad@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 21, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–25878 Filed 10–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of an Interagency Autism Coordinating Committee (IACC) meeting.

The purpose of the IACC meeting is to discuss recommendations for the annual update of the IACC Strategic Plan for Autism Spectrum Disorders Research. The meeting will be open to the public and will be accessible by webcast and conference call.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of Meeting: Open Full Committee Meeting.

Date: November 10, 2009.

Time: 9 a.m. to 5 p.m.* Eastern Time—* Approximate end time.

Agenda: To discuss recommendations for the annual update of the IACC Strategic Plan for Autism Spectrum Disorder Research.

Place: National Institute of Mental Health, 6001 Executive Boulevard, Neuroscience Center, Conference Rooms A1/A2, Rockville, MD 20852.

Webcast Live: http://videocast.nih.gov/.

Conference Call Access:

Dial: 888–577–8995.

Access code: 1991506.

Cost: The meeting is free and open to the public.

Registration: Pre-registration is recommended to expedite check-in. Seating is limited to room capacity and on a first come, first served basis. Online pre-registration will be available. Please visit the IACC Web site for pre-registration information: *http://www.iacc.hhs.gov.*

Access: Metro accessible—Red Line—White Flint Metro Station.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, Office of the Director, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Room 8200, Bethesda, MD 20892–9669, *Phone:* 301–443–6040, *E-mail: IACCPublicInquiries@mail.nih.gov.*

Please Note: Any member of the public interested in presenting oral comments to the Committee must notify the Contact Person listed on this notice at least 5 days in advance of the meeting. Interested individuals and representatives of organizations must submit a letter of intent, a brief description of the organization represented, and a written/electronic copy of the oral presentation/statement by 5 p.m. ET, November 6, 2009. A printed/electronic copy of the comment/statement provided by the deadline is required prior to the oral presentation; the document will become a part of the public record. Only one representative of an organization will be allowed to present oral comments and presentations will be limited to three to five minutes per speaker, depending on number of speakers to be accommodated within the allotted time. Speakers will be assigned a time to speak in order of the date and time when their request to speak is received, along with the required written statement submitted in advance of the meeting by November 6 at 5 p.m. ET.

In addition, any interested person may submit written comments to the IACC prior to the meeting by sending the statement to the Contact Person listed on this notice at least by 5 p.m. ET, November 6, 2009. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. All written statements received by the deadline for both oral and written public comment will be provided to the IACC for their consideration.

The meeting will be open to the public through a conference call phone number and webcast live on the Internet. Individuals who participate in person or by using these electronic services and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request at least 7 days prior to the meeting.

As a part of security procedures, attendees should be prepared to present a photo ID at the meeting registration desk during the check-in process. Pre-registration is recommended. Seating will be limited to the room capacity and seats will be on a first come, first served basis, with expedited check-in for those who are pre-registered.

Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard.

To access the webcast live on the Internet the following computer capabilities are required: (A) Internet Explorer 5.0 or later, Netscape Navigator 6.0 or later or Mozilla Firefox 1.0 or later; (B) Windows® 2000, XP Home, XP Pro, 2003 Server or Vista; (C) Stable 56k, cable modem, ISDN, DSL or better Internet connection; (D) Minimum of Pentium 400 with 256 MB of RAM (Recommended); (E) Java Virtual Machine enabled (Recommended)

Meeting schedule subject to change.

This meeting is being published less than 15 days prior to the meeting due to the timing limitations for completing the updating of the Annual Strategic Plan for Autism Spectrum Disorder Research.

Information about the IACC is available on the Web site: *http://www.iacc.hhs.gov.*

Dated: October 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–25991 Filed 10–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Child Health and Human Development Special Emphasis Panel, November 13, 2009, 10 a.m. to November 13, 2009, 4 p.m., National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD, 20852 which was published in the **Federal Register** on October 16, 2009, 74 FR 53278.

The meeting date and time have been changed to November 16, 2009, 9 a.m. to November 16, 2009, 12 p.m.

The meeting is closed to the public.

Dated: October 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–25955 Filed 10–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC)—Health Disparities Subcommittee (HDS)

Correction: This notice was published in the **Federal Register** on October 15, 2009, Volume 74, Number 198, Page

52968. The time, place, and public comment period of the ACD, CDC—HDS meeting has changed. The meeting will also be teleconferenced.

Time: 2 p.m.–3:30 p.m.

Place: CDC, 1600 Clifton Road, NE., Atlanta, GA 30333, Building 19, Room 247/248, Global Communication Center. To participate by teleconference, please dial 1–800–369–2112 and enter passcode 4102105.

Status: Open to the public; teleconference access limited only by availability of telephone ports. The public is welcome to participate during the public comments period which is tentatively scheduled from 3 to 3:15 p.m. EDT.

Contact Person for More Information: Walter W. Williams, M.D., M.P.H., Designated Federal Officer, ACD, CDC—HDS, 1600 Clifton Road, NE., M/S E67, Atlanta, Georgia 30333. Telephone 404–498–2310, *E-mail: www1@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 22, 2009.

Elaine Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–26054 Filed 10–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Conference Grant Review With An Environmental Health Focus.

Date: November 20, 2009.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat'l Institute of Environmental Health Sciences, 530 Davis Drive, Morrisville, NC 27560 (Telephone Conference Call).

Contact Person: Teresa Nesbitt, PhD, DVM, Chief, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–7571, *nesbittt@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–25995 Filed 10–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee, (HICPAC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Times and Dates: 9 a.m.–5 p.m., November 12, 2009. 9 a.m.–12 p.m., November 13, 2009.

Place: Washington Marriott at Metro Center, Salons C–D, 775 12th Street, NW., Washington, DC 20005, Telephone: (202) 737–2200.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with providing advice and guidance to the Secretary, HHS; the Assistant Secretary for Health, HHS; the Director, CDC; and the Director, National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID), regarding: (1) The practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (*e.g.*, nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters To Be Discussed: The agenda will include updates on Recovery Act activities and the draft guideline for prevention of intravascular catheter-related bloodstream infections, and discussion of infection control in ambulatory care settings.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Michelle King, HICPAC, Division of Healthcare Quality Promotion, NCPDCID, CDC, l600 Clifton Road, NE., Mailstop A–07, Atlanta, Georgia 30333 Telephone (404) 639–2936.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 20, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–25913 Filed 10–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Systems for Biomarker Research and Development.

Date: November 23, 2009.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Suite 703, Room 7142, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Thomas M. Vollberg, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7142, Bethesda, MD 20892, 301–594–9582, *vollbert@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–25909 Filed 10–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities; Recombinant DNA Research: Proposed Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines)

ACTION: Notice of consideration of a proposed action under the *NIH Guidelines*.

SUMMARY: A proposal by Dr. Harlan Caldwell at the Rocky Mountain Laboratories (RML) involving the deliberate transfer of a tetracycline resistance trait to non-ocular strains of *Chlamydia trachomatis* has been submitted to the NIH Office of Biotechnology Activities (OBA). The introduction of tetracycline resistance could compromise the ability to treat disease caused by *Chlamydia trachomatis* as doxycycline is currently used to treat disease caused by this organism. Under Section III–A–1 of the *NIH Guidelines,* if the deliberate transfer of a drug resistance trait to microorganisms could compromise the use of the drug to control disease in humans, veterinary medicine, or agriculture the experiment must be reviewed by the NIH Recombinant DNA Advisory Committee (RAC) and approved by the NIH Director.

On September 24, 2007 the NIH Director granted approval to Dr. Daniel Rockey, Oregon State University and Dr. Walter Stamm, University of Washington, to introduce tetracycline resistance into non-ocular strains of *Chlamydia trachomatis* under the containment level recommended by the RAC—Biosafety level 2 containment with Biosafety level 3 practices (see *NIH Guidelines* Appendix G–II–B and G–II–C). The requirements regarding containment as well as additional required occupational health measures were published in the **Federal Register** (72 FR 61661). This approval was specific for Dr. Rockey at Oregon State University and Dr. Stamm at the University of Washington.

Dr. Caldwell at RML is proposing to develop a plasmid-based system to define the experimental conditions required for transformation of non-ocular *C. trachomatis* strains to tetracycline resistance. The investigators are proposing to perform these experiments under the same containment and implement the same occupational health measures required for the research proposed by Drs. Rockey and Stamm (72 FR 61661). This proposal will be discussed at the December 1–3, 2009 meeting of NIH Recombinant DNA Advisory Committee.

DATES: The public is encouraged to submit written comments on this proposed action. Comments may be submitted to the OBA in paper or electronic form at the OBA mailing, fax, and e-mail addresses shown below under the heading **FOR FURTHER INFORMATION CONTACT**. The NIH will consider all comments submitted by November 25, 2009. Written comments submitted by November 12, 2009 will be reproduced and distributed to the RAC for consideration at its December 1–3, 2009 meeting. In addition, an opportunity for public comment will be provided at that meeting. All written comments received in response to this notice will be available for public inspection at the NIH OBA office, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892 (telephone, 301–496–9838), weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Contact OBA by e-mail at *oba@od.nih.gov,* or telephone at 301–496–9838, if you have questions, or require additional information about this proposed action. Comments may be submitted to the same email address or by fax at 301–496–9839 or sent by U.S. mail to the Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Suite 750, MSC 7985, Bethesda, Maryland 20892–7985. For additional information about the RAC meeting at which this proposed action will be deliberated, please visit the NIH OBA Web site at: *http://oba.od.nih.gov/oba/index.html.*

SUPPLEMENTARY INFORMATION: Background information may be obtained by contacting NIH OBA via e-mail at *oba@od.nih.gov* or by going to the OBA Web site at *http://oba.od.nih.gov/rdna_rac/rac_meetings.html.*

Dated: October 21, 2009.

Jacqueline Corrigan-Curay,

Acting Director, Office of Biotechnology Activities, National Institutes of Health.

[FR Doc. E9–25925 Filed 10–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Privacy Act of 1974; Consolidation of Department of Homeland Security Office of Inspector General System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice to consolidate one Privacy Act system of records notice.

SUMMARY: In accordance with the Privacy Act of 1974 the Department of Homeland Security is giving notice that it proposes to consolidate the Privacy Act system of records notice titled, Department of Homeland Security Office of Inspector—001 General Audit Training Tracking System of Records into the existing Department of Homeland Security-wide system of records notice titled, Department of Homeland Security/ALL—003 General Training Records System of Records.

DATES: These changes will take effect on November 27, 2009.

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Mary Ellen Callahan (703–235–0790), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing integration and management efforts, the Department of Homeland Security (DHS) is consolidating the system of records notice titled, DHS/Office of Inspector General (OIG)—001 Audit Training Tracking System of Records (70 FR 20154, April 18, 2005).

DHS will continue to collect and maintain records regarding audit training and will rely upon the existing DHS-wide system of records notice titled, DHS/ALL—003 General Training Records System of Records (73 FR 71656, November 25, 2008).

Eliminating this notice will have no adverse impacts on individuals, but will promote the overall streamlining and management of DHS Privacy Act record systems.

Dated: October 20, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–25929 Filed 10–27–09; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2009–0094]

Privacy Act of 1974; Department of Homeland Security Office of Inspector General—002 Investigative Records System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of revised Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 the Department of Homeland Security proposes to revise a system of records titled, Department of Homeland Security Office of Inspector General—002 Investigative Records System of Records, previously titled, Department of Homeland Security Office of Inspector General—002 Investigations Data Management System of Records. As a result of the biennial review of this system and changes to the application software, the Department of Homeland Security is proposing changes to the system name, system classification, categories of individuals and records in the system, authorities for maintenance of the system, routine uses, as well as storage, safeguards, retention and disposal, and notification procedures. There will be no change to the Privacy Act exemptions currently in place for this system of records, however, the Department is issuing a Notice of Proposed Rulemaking concurrent with this system of records elsewhere in the **Federal Register** to reflect the system name change. This revised system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before November 27, 2009. Changes to this system will be effective November 27, 2009.

ADDRESSES: You may submit comments, identified by Docket Number DHS–2009–0094, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Doris A. Wojnarowski (202–254–4211), Department of Homeland Security, Office of Inspector General, Mail Stop 2600, 245 Murray Drive, SW., Building 410, Washington, DC 20528; or by facsimile (202) 254–4299. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Homeland Security (DHS) Office of Inspector General (OIG) is revising a system of records under the Privacy Act of 1974 (5 U.S.C. 552a), for its investigative files. The Department is updating and reissuing the DHS/OIG–002 Investigations Data Management System of Records (IDMS) (70 FR 58448, October 6, 2005) under a new name, the DHS/OIG–002 Investigative Records System of Records, to cover these and additional records.

The DHS Inspector General is responsible for conducting and supervising independent and objective audits, inspections, and investigations of the programs and operations of DHS. The OIG promotes economy, efficiency, and effectiveness within the Department and prevents and detects fraud, waste, and abuse in its programs and operations. The OIG's Office of Investigations investigates allegations of criminal, civil, and administrative misconduct involving DHS employees, contractors, grantees, and Departmental programs and activities. These investigations can result in criminal prosecutions, fines, civil monetary penalties, and administrative sanctions. Additionally, the Office of Investigations provides oversight and monitors the investigative activity of DHS' various internal affairs offices.

The DHS/OIG–002 Investigative Records System of Records assists the OIG with receiving and processing allegations of violation of criminal, civil, and administrative laws and regulations relating to DHS employees, contractors, grantees, and other individuals and entities associated with DHS. The system includes both paper investigative files and the Enforcement Data System (EDS), an electronic case management and tracking information system which also generates reports. EDS allows the OIG to manage information provided during the course of its investigations, and, in the process, to facilitate its management of investigations and investigative resources. Through EDS, the OIG can create a record showing disposition of allegations; track actions taken by management regarding misconduct; track legal actions taken following referrals to the U.S. Department of Justice for prosecution or civil action; provide a system for creating and reporting statistical information; and track OIG investigators' qualifications as well as government property and other resources used in investigative activities.

This system notice makes several changes to the existing record system. It changes the name of the system; adds unclassified information to system classification; adds Federal agencies, DHS contractors, DHS grantees, DHS components, and DHS OIG employees performing investigative functions to categories of individuals covered by the system; completely updates categories of records within the system; adds new authorities for maintenance of the system to include 6 U.S.C. 113(b) and the Inspector General Act of 1978, as amended; revises the routine uses to conform with the needs of DHS OIG; updates storage, safeguards and retention and disposal of the system; and outlines notification procedures for the system.

Consistent with DHS's information sharing mission, information stored in the DHS/OIG–002 Investigative Records System of Records may be shared with other DHS components, as well as appropriate Federal, State, local, tribal, foreign, or international government agencies. This sharing will only take place after DHS determines that the receiving agency has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

In accordance with the Privacy Act of 1974 DHS proposes to revise a system of records titled, DHS/OIG–002 Investigative Records System of Records, previously titled, DHS/OIG–002 Investigations Data Management System of Records (70 FR 58448,

October 6, 2005). As a result of the biennial review of this system and changes to the application software, DHS is proposing changes to the system name, system classification, categories of individuals and records in the system, authorities for maintenance of the system, routine uses, as well as storage, safeguards, retention and disposal, and notification procedures. There will be no change to the Privacy Act exemptions currently in place for this system of records, however, DHS is issuing a Notice of Proposed Rulemaking concurrent with this system of records elsewhere in the **Federal Register** to reflect the system name change. This revised system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by submitting a request pursuant to DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to which their records are put, and to assist individuals to more easily find such files within the agency. Below is the revised description of the DHS/OIG–002 Investigative Records System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this revised system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS:

DHS–OIG–002.

SYSTEM NAME:

Department of Homeland Security Office of Inspector General Investigative Records System of Records.

SECURITY CLASSIFICATION:

Classified, sensitive, unclassified.

SYSTEM LOCATION:

Records are maintained at the OIG Headquarters in Washington, DC, and in OIG field offices nationwide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals filing complaints of criminal, civil, or administrative violations, including, but not limited to, fraud, waste, or mismanagement; individuals alleged to have been involved in such violations; individuals identified as having been adversely affected by matters investigated by the OIG; individuals who have been identified as possibly relevant to, or who are contacted as part of, an OIG investigation, including: (A) Current and former employees of the DHS, other Federal agencies, and DHS contractors, grantees, and persons whose association with current and former employees relate to alleged violations under investigation; and, (B) witnesses, complainants, confidential informants, suspects, defendants, or parties who have been identified by the DHS OIG, other DHS components, other agencies, or members of the general public in connection with authorized OIG functions; and DHS OIG employees performing investigative functions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Individual's name and aliases;
- Date of birth;
- Social Security Number;
- Telephone and cell phone numbers;
- Physical and mailing addresses;
- Electronic mail addresses;
- Physical description;
- Citizenship;
- Fingerprints, voiceprints, and other biometric data;
- Photographs;
- Education;
- Medical history;
- Travel history including passport information;
- Financial data;
- Criminal history;
- Work experience;
- Relatives and associates;
- Any other personal information relevant to the subject matter of an OIG investigation;
- Investigative files containing complaints and allegations, witness statements; transcripts of electronic monitoring; subpoenas and legal opinions and advice; reports of investigation; reports of criminal, civil, and administrative actions taken as a result of the investigation; and other relevant evidence;
- Training and firearms qualification records of employees performing investigative functions; and
- Accountable property records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 6 U.S.C. 113(b); the Inspector General Act of 1978, as amended.

PURPOSE(S):

The records and information collected and maintained in this system are used to receive and process allegations of violations of criminal, civil, and administrative laws and regulations relating to DHS programs, operations, and employees, as well as contractors and other individuals and entities associated with DHS; monitor case assignments, status, disposition, and results; manage investigations and information provided during the course of such investigations; track actions taken by management regarding misconduct and other allegations; track legal actions taken following referrals to the Department of Justice for prosecution or litigation; provide information relating to any adverse action or other proceeding that may occur as a result of the findings of an investigation; provide a system for creating and reporting statistical information; and to provide a system to track firearms qualification and training records of OIG employees performing investigative functions and accountable property records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the

following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. any employee of DHS in his/her official capacity;

3. any employee of DHS in his/her individual capacity where the Department of Justice or DHS has agreed to represent the employee; or,

4. the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and § 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, including peer reviews, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity), or harm to the individuals that rely on the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To a Federal, State, or local agency, or other appropriate entity or individual, or through established liaison channels to selected foreign governments, in order to provide intelligence, counterintelligence, or other information for the purposes of intelligence, counterintelligence, or antiterrorism activities authorized by U.S. law, Executive Order, or other applicable national security directive.

I. To international and foreign governmental authorities in accordance with law and formal or informal international agreements.

J. To an appropriate Federal, State, local, tribal, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual or issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person making the request.

K. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure.

L. To the Council of the Inspectors General on Integrity and Efficiency (CIGIE) and other Federal agencies, as necessary, if the records respond to an audit, investigation or review conducted pursuant to an authorizing law, rule or regulation, and in particular those conducted at the request of the CIGIE's Integrity Committee pursuant to statute.

M. To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation arising from the matters of which they complained and/or of which they were a victim.

N. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Paper media are retrieved alphabetically by name of subject or complainant, by case number, and/or by special agent name and/or employee identifying number. Electronic media are retrieved by the name or identifying number for a complainant, subject, victim, or witness; by case number; by special agent name or other personal identifier; or by field office designation.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Investigative case files that involve substantive information relating to national security or allegations against

senior DHS officials, that attract national media or congressional attention, or that result in substantive changes in DHS policies or procedures are permanent and are transferred to the National Archives and Records Administration 20 years after completion of the investigation and all actions based thereon. All other investigative case files are destroyed 20 years after completion of the investigation and all actions based thereon. Accountable property records, training and firearms qualification records, and management reports are destroyed when no longer needed for business purposes.

SYSTEM MANAGER(S) AND ADDRESS:

The System Manager is the Assistant Inspector General for Investigations, DHS OIG, Mail Stop 2600, 245 Murray Drive, SW., Building 410, Washington, DC 20528.

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, the Office of Inspector General will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content may submit a request in writing to the Headquarters or Office of Inspector General's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''Contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP–0550, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the Component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained from sources including, but not limited to, the individual record subjects; DHS officials and employees; employees of Federal, State, local, and foreign agencies; and other persons and entities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f); and (g) pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. § 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H); and (f) pursuant to 5 U.S.C. 552a(k)(1), (k)(2) and (k)(5).

Dated: October 20, 2009.

Mary Ellen Callahan

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–25945 Filed 10–27–09; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2009–0039]

Privacy Act of 1974; Department of Homeland Security/ALL—001 Freedom of Information Act and Privacy Act Records System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 the Department of Homeland Security proposes to update and reissue a Department of Homeland Security system of records notice titled, Department of Homeland Security/ALL—001 Freedom of Information Act and Privacy Act Records System of Records. The updated system of records consists of information that is created and used by the Department's Freedom of Information Act and Privacy Act staff to process requests as well as to manage the Freedom of Information Act and Privacy Act programs. As a result of the biennial review of this system, the Privacy Office has: Updated the system classification to include unclassified information; updated the categories of individuals and records to include individuals who are the subjects of requests, Department of Justice and other government litigators and/or DHS personnel assigned to handle such requests or appeals; revised the routine uses to conform with the needs of the Freedom of Information Act and Privacy Act program; and updated the Privacy Act exemptions for this system of records to include the addition of 5 U.S.C. 552a(k)(3) and (k)(6) of the Privacy Act. A Notice of Proposed Rulemaking is published elsewhere in the **Federal Register** further exempting these records from 5 U.S.C. 552a(k)(3) and (k)(6) of the Privacy Act. The initial Privacy Act exemptions published with this system of records (December 6, 2004), will remain in place until this rule is finalized with the addition of 5 U.S.C. 552a(k)(3) and (k)(6). This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before November 27, 2009. This system will be effective November 27, 2009.

ADDRESSES: You may submit comments, identified by docket number DHS–2009–0039 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer and Chief Freedom of Information Act Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Homeland Security (DHS) and its components and offices rely on the system of records, DHS/ALL—001 Freedom of Information Act and Privacy Act Records System of Records (69 FR 70460, December 6, 2004) for the collection and maintenance of records that concern the Department's Freedom of Information Act (FOIA) and Privacy Act (PA) records.

As part of its efforts to maintain its Privacy Act records systems, DHS is updating and reissuing a Department-wide system of records under the Privacy Act (5 U.S.C. § 552a) for DHS FOIA and PA records. This will ensure that all components of DHS follow the same privacy rules for collecting and handling FOIA and PA records. The collection and maintenance of this information will assist DHS in managing the Department's FOIA and PA records.

Consistent with DHS' information sharing mission, information stored in the DHS/ALL—001 Freedom of Information Act and Privacy Act Records System of Records may be shared within DHS, as well as with appropriate other Federal, State, local, tribal, foreign, or international government agencies. Disclosure of the information in any record of this system to officers and employees of DHS is permitted when requested by, or with the prior consent of, the individual to whom the record pertains, or when those officers and employees otherwise have a need for the record in the performance of their duties. Disclosure of most personally identifiable information contained in this system outside of DHS will only take place when requested by or with the prior consent of the individual to whom the record pertains, unless DHS determines, consistent with the routine uses set forth in this system of records notice, that the receiving component, agency or entity has a need to know the information to carry out valid national security, law enforcement, immigration, intelligence, or other functions. Certain information about FOIA requestors, including the name of the requestor and a description of the requested records is not exempt under the Freedom of Information Act and is released to outside entities who request such information in accordance with 5 U.S.C. 552a(b)(2).

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a DHS system of records by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to their records, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/ALL—001 Freedom of Information Act and Privacy Act Records System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

DHS/ALL—001

SYSTEM NAME:

Department of Homeland Security Freedom of Information Act and Privacy Act Records System of Records.

SECURITY CLASSIFICATION:

Classified, sensitive, and unclassified.

SYSTEM LOCATION:

Records are maintained at Department and Component Headquarters in Washington, DC and field locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include: Individuals who submit FOIA and/or PA requests to DHS; individuals who appeal DHS denial of their FOIA and/or PA requests; individuals whose requests, appeals, and/or records have been referred to DHS by other agencies; and, in some instances, attorneys or other persons representing individuals submitting such requests and appeals, individuals who are the subjects of such requests, Department of Justice and other government litigators and/or DHS personnel assigned to handle such requests or appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Records received, created, or compiled in processing FOIA and PA requests or appeals, including:
  - Original requests and administrative appeals;
  - Intra or interagency memoranda, correspondence, notes and other documentation related to the processing of the FOIA and PA request;
  - Correspondence with the individuals or entities that submitted the requested records and copies of the requested records, including when those records might contain confidential business information or personal information.
- Types of information in the records may include:
  - Requesters' and their attorneys' or representatives' names, addresses, e-mail, telephone numbers, and FOIA and PA case numbers; office telephone numbers, and office routing symbols of DHS employees and contractors;
  - Names, telephone numbers, and addresses of the submitter of the information requested;
  - Unique case identifier;
  - Social security number;

○ Alien identification number of the requester/appellant or the attorney or other individual representing the requester, or other identifier assigned to the request or appeal.

• The system also contains copies of all documents relevant to appeals and lawsuits under the FOIA and PA including from Department of Justice and other government litigators.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 552 (Freedom of Information Act), 552a (Privacy Act); 44 U.S.C. 3101 (Records Management by Federal Agencies); E.O. 12958 (Classified National Security Information, as amended).

PURPOSE(S):

The purpose of this system is to process record requests and administrative appeals under the FOIA and PA as well as access, notification, and amendment requests and appeals under the PA. Also, for participating in litigation arising from such requests and appeals; and in assisting DHS in carrying out any other responsibilities under the FOIA or PA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign agency, including law enforcement, or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To a Federal, State, territorial, tribal, local, international, or foreign agency or entity for the purpose of consulting with that agency or entity:

1.To assist in making a determination regarding access to or amendment of information, or

2. For the purpose of verifying the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment of information.

I. To a Federal agency or other Federal entity that furnished the record or information for the purpose of permitting that agency or entity to make a decision regarding access to or correction of the record or information, or to a federal agency or entity for purposes of providing guidance or advice regarding the handling of particular requests.

J. To the Department of Justice, including the United States Attorney's Offices, or a consumer reporting agency for collection action on any delinquent debt when circumstances warrant.

K. To the Office of Management and Budget or the Department of Justice to obtain advice regarding statutory and other requirements under the Freedom of Information Act or the Privacy Act of 1974.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Privacy Act information may be reported to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by the name, unique case identifier, social security number, or alien identification number of the requester/appellant or the attorney or other individual representing the requester, or other identifier assigned to the request or appeal.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know

the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

FOIA and PA records are retained in accordance with National Archives and Records Administration's General Records Schedule 14.

FOIA and PA records in litigation are retained for ten years after the end of the fiscal year in which judgment was made or when all appeals have been exhausted, whichever is later. This disposition is temporary and is under review and approval by the National Archives and Records Administration through pending schedule N1–563–08–33, Item 11.

If the FOIA or PA record deals with significant policy-making issues, it is a permanent record.

A FOIA or PA record may qualify as a permanent Federal Record. A permanent record is one that has been determined by NARA to have sufficient value to warrant its preservation in the National Archives of the United States. Permanent records include all records accessioned by NARA into the National Archives of the United States and later increments of the same records, and those for which the disposition is permanent on SF 115s, Request for Records Disposition Authority, approved by NARA on or after May 14, 1973.

SYSTEM MANAGER AND ADDRESS:

Mary Ellen Callahan (703–235–0780), Chief Privacy Officer and Chief Freedom of Information Act Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

For components of DHS, the System Manager can be found at *http://www.dhs.gov/foia* under ''contacts.''

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters' or component's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP–0550, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained by those individuals who submit requests and administrative appeals pursuant to the FOIA and the PA; the agency records searched and identified as responsive in the process of responding to such requests and appeals; Departmental personnel assigned to handle such requests and appeals; other agencies or entities that have referred to DHS requests concerning DHS records, or that have consulted with DHS regarding handling of particular requests; and submitters or subjects of records or information that have provided assistance to DHS in making access or amendment determinations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in (c)(3) and (4): (d); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Additionally, The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in (c)(3): (d), (e)(1), (e)(4)(G), (H), (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1), (k)(2), (k)(3), (k)(5) and (k)(6). When DHS is processing Privacy Act and/or FOIA requests, responding to appeals, or participating in FOIA or Privacy Act litigation, exempt materials from other systems of records may become part of the records in this system. To the extent that copies of exempt records from other systems of records are entered into this system, DHS hereby claims the same exemptions for those records that are claimed for the original primary systems of records from which they originated.

Dated: October 20, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–25938 Filed 10–27–09; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO35000.L14300000.FR0000.24–1A; OMB Control Number 1004–0012]

Notice of Information Collection; Application for Land for Recreation or Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-day notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) for a 3-year extension of OMB Control Number 1004–0012 under the Paperwork Reduction Act. The respondents are State, Territory, county, and local governments; nonprofit corporations; and nonprofit associations which provide information to the BLM in support of applications for land under the Recreation and Public Purposes Act.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30

days. Therefore, written comments should be received on or before November 27, 2009.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0012), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *oira_docket@omb.eop.gov.* Please mail a copy of your comments to: Bureau Information Collection Clearance Officer (WO–630), Department of the Interior, 1849 C Street, NW., Mail Stop 401 LS, Washington, DC 20240.

You may also send a copy of your comments by electronic mail to *jean_sonneman@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Alzata L. Ransom, Lands and Realty Group, at (202) 912–7341. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Ransom.

SUPPLEMENTARY INFORMATION:

Title: Application for Land for Recreation or Public Purposes (43 CFR 2470 and 2912).

OMB Number: 1004–0012.

Abstract: The Bureau of Land Management proposes to extend the currently approved collection of information, which enables the agency to determine whether or not applicants are qualified to lease or purchase lands for recreation or public purposes.

60–Day Notice: On May 19, 2009, the BLM published a 60-day notice (74 FR 23427) requesting comments on the proposed information collection. The comment period ended on July 20, 2009. No comments were received.

Current Action: This proposal is being submitted to extend the expiration date of November 30, 2009.

Type of Review: 3-year extension.

Affected Public: State, Territory, county, and local governments; nonprofit corporations; and nonprofit associations.

Obligation to Respond: Required to obtain or retain benefits.

Annual Responses: 23.

Annual Burden Hours: 920.

A filing fee of $100 is associated with each of these information collections. The BLM requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments to the addresses listed under **ADDRESSES**. Please refer to OMB control number 1004–0012 in your correspondence. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Jean Sonneman,

Acting Information Collection Clearance Officer.

[FR Doc. E9–25981 Filed 10–27–09; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The 32 unassociated funerary objects are 1 wooden warrior's helmet (69–30–10/1587); 3 wooden humanoid masks (69–30–10/1604; 69–30–10/1677; and 69–30–10/1678); 1 mosquito frontlet mask (69–30–10/1607); 1 small shaman's spirit mask (69–30–10/1667); 1 wooden box depicting a human figure in bondage (69–30–10/1673); 2 wooden carvings (69–30–10/1674 - 1675); 1 wooden octopus mask (69–30–10/1679); 1 wand with carved eagle head design (69–30–10/1690); 1 shaman's mask (69–30–10/1699); 2 shaman's tools (69–30–10/1719 -1720); 1 wooden wand (69–30–10/1764); 2 wooden rattles (69–30–10/1779 - 1780); 1 oystercatcher rattle (69–30–10/1785); 1 carved argillite dish (69–30–10/1841); 1 greenstone grinding tool (69–30–10/1842); 1 carved wood and metal pipe (69–30–10/1853); 1 wooden pipe depicting a bird (69–30–10/1867); 1 wooden pipe depicting killer whales (69–30–10/1872); 1 carved wood and metal pipe (69–30–10/1875); 1 wooden and metal pipe in the shape of a frog (69–30–10/1876); 1 wooden pipe carved in shallow relief (69–30–10/1880); 1 ivory carving (69–30–10/1909); 1 ivory charm (69–30–10/1915); 1 gaming piece (69–30–10/1965); 1 shaman's necklace strung with copper wire (69–30–10/1989) ; 1 carved horn (69–30–10/2037); and 1 wooden figure depicting a brown bear (69–30–10/2039). The Peabody Museum of Archaeology and Ethnology is not in possession of the human remains.

In 1869, the 32 unassociated funerary objects were purchased by the Peabody Museum from Edward G. Fast. The totality of the evidence indicates that these items came from Tlingit territory in the area of southeast Alaska. Edward Fast wrote that he collected all of these items from ''that portion of the [Alaskan] territory south of Mount St. Elias'' while he was stationed in Sitka, AK, between October 1867 and July 1868. However, additional historical sources indicate that a portion of Fast's collection came from the Russian American Company's museum and was collected by the Russian scholar I.G. Voznesenskii.

Museum documentation, combined with other sources, indicates that the cultural items were likely recovered from grave contexts. These items most likely date to the Historic period, specifically to the 19th century. Anthropological and historic information indicate that the area south of Mount St. Elias in the state of Alaska is within the traditional and historic territory of the Tlingit people. Present-day Tlingit people are represented by Sealaska Corporation, a Native corporation representing Tlingit, Haida, and Tsimshian peoples within the southeastern part of Alaska.

Officials of the Peabody Museum of Archaeology and Ethnology have

determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 32 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from specific burial sites of Native American individuals. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Tlingit, represented by Sealaska Corporation.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Cambridge, MA 02138, telephone (617) 496–3702, before November 27, 2009. Repatriation of the unassociated funerary objects to Sealaska Corporation may proceed after that date if no additional claimants come forward.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Central Council Tlingit & Haida Indian Tribes, Kootznoowoo Inc., Sealaska Corporation, Sitka Tribe of Alaska, and Yakutat Tlingit Tribe.

Dated: October 8, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–25966 Filed 10–27–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: San Diego Museum of Man, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the San Diego Museum of Man, San Diego, CA, that meets the definition of ''unassociated funerary object'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural item. The National Park Service is not responsible for the determinations in this notice.

The one fragmented textile (museum No. 1963–5–1) was found in a Yokut cemetery at the south end of Buena Vista Lake, Kern County, CA. The textile is contained in a frame with a note on the back of the frame stating, ''Found in May 1935 by Edwin F. Walker in a Yokuts cemetery 25 feet above the shoreline of Buena Vista Lake, Kern County, California, and 1,000 feet north of shoreline at outlet of the lake.'' The textile was received at the San Diego Museum of Man in 1963.

Museum records clearly indicate that the textile was found in a Yokut cemetery. Further information from the back of the frame states, ''Found...in square F/70, burial H, Depth 45 – disturbed burial of an adult, elderly, flexed, head to west, fabric wrapped around legs, no other material.'' There are no known associated human remains in the museum's collection. The Santa Rosa Indian Community of the Santa Rosa Rancheria, California provided the museum with territory and language family maps, written ethnographical information about the Yokuts and their inter-relationships with surrounding communities, which covers the territory where the unassociated funerary object was discovered. Based on consultation, the museum was able to determine that the Santa Rosa Indian Community of the Santa Rosa Rancheria, California has a shared group identity with the unassociated funerary object.

Officials of the San Diego Museum of Man have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the one cultural item described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the San Diego Museum of Man also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary object and the Santa Rosa Indian Community of the Santa Rosa Rancheria, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary object should contact Philip Hoog, Archaeology and NAGPRA Coordinator, San Diego Museum of Man, 1350 El Prado, Balboa Park, San Diego, CA 92101, telephone (619) 239–2001, before November 27, 2009. Repatriation of the unassociated funerary object to the Santa Rosa Indian Community of the Santa Rosa Rancheria, California may proceed after that date if no additional claimants come forward.

The San Diego Museum of Man is responsible for notifying the Santa Rosa Indian Community of the Santa Rosa Rancheria, California that this notice has been published.

Dated: October 7, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–25965 Filed 10–27–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: South Dakota State Historical Society-Archaeological Research Center, Rapid City, SD

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the South Dakota State Historical Society-Archaeological Research Center, Rapid City, SD. The human remains and associated funerary objects were removed from Lawrence County, SD.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by South Dakota State Historical Society- Archaeological Research Center professional staff in consultation with representatives of the Cheyenne Sioux Tribe of the Cheyenne River Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; and Yankton Sioux Tribe of South Dakota.

In 2007, human remains representing a minimum of one individual were

removed from a coffin burial at the Old Deadwood (Ingleside) Cemetery (39LA3000/07–59) in Lawrence County, SD, by personnel from the Archaeological Research Center during improvements to a retaining wall. No known individual was identified. The two associated funerary objects are a coffin and a soil sample.

The manner of burial and historic documentation suggests that the human remains are associated with the Early Historic Period (A.D. 1876–1878). A physical anthropological assessment of the human remains resulted in a determination that the individual is most likely Native American. An evaluation by the South Dakota State Historical Society-Archaeological Research Center professional staff on the manner and location of the burial also supports an identification of the human remains as Native American, and most likely culturally identifiable as Lakota. The Lakota are represented by the Cheyenne Sioux Tribe of the Cheyenne River Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; and Yankton Sioux Tribe of South Dakota.

Officials of the South Dakota State Historical Society-Archaeological Research Center have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the South Dakota State Historical Society-Archaeological Research Center also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the two objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the South Dakota State Historical Society-Archaeological Research Center have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Cheyenne Sioux Tribe of the Cheyenne River Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; and Yankton Sioux Tribe of South Dakota.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Rose Estep Fosha, staff archaeologist, South Dakota State Archaeological Research Center, 2425 E. St. Charles, Rapid City, SD 57703, telephone (605) 394–1936, before November 27, 2009. Repatriation of the human remains and associated funerary objects to the Cheyenne Sioux Tribe of the Cheyenne River Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; and Yankton Sioux Tribe of South Dakota may proceed after that date if no additional claimants come forward.

The South Dakota State Historical Society-Archaeological Research Center is responsible for notifying the Cheyenne Sioux Tribe of the Cheyenne River Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; and Yankton Sioux Tribe of South Dakota that this notice has been published.

Dated: October 7, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–25963 Filed 10–27–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: New York University College of Dentistry, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the New York University College of Dentistry, New York, NY. The human remains were removed from an unknown location and from Kyle Mound, Muscogee County, GA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by New York University College of Dentistry professional staff in consultation with representatives of the Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; and Thlopthlocco Tribal Town, Oklahoma.

At an unknown date, human remains representing a minimum of one individual were removed from an unknown location. The human remains were acquired by Dr. Joseph Jones of Louisiana at an unknown date. In 1906, the widow of Dr. Jones sold his collection to the Museum of the American Indian, Heye Foundation. In 1956, the Museum of the American Indian transferred the human remains to Dr. Theodore Kazamiroff, New York University College of Dentistry. No known individual was identified. No associated funerary objects are present.

Museum records indicate that the human remains are from an unknown location and are those of a Creek individual. The attribution of a tribal affiliation of Creek in the museum records suggests that the remains may date to the Historic period. No information from the museum records, osteological assessment, or consultation conflicts with this interpretation. Tribal representatives of the Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; and Thlopthlocco Tribal Town, Oklahoma, support the identification of the human remains as Creek.

In the late 1800s or early 1900s, human remains representing a minimum of one individual were removed from Kyle Mound, Muscogee County, GA, by Friend W. Miller. In 1946, they were acquired by the Museum of the American Indian, Heye Foundation. In 1956, the Museum of the American Indian transferred the human remains to Dr. Theodore Kazamiroff, New York University College of Dentistry. No known individual was identified. No associated funerary objects are present.

Archeological data, including pottery types and shell gorgets, indicate that Kyle Mound was a Late Mississippian mound. It was part of the Chattahoochee subtradition of the Lamar Complex and

likely dates to the late Rood or Bull Creek phase, circa A.D. 1200–1475. A Protohistoric or Historic period cemetery surrounded the mound. The Lower Creek village of Kasihta was located next to the mound and cemetery. The village was first identified in historic records in 1732, but had already been in existence for some time. It was a major regional center until the residents were relocated from the village to Oklahoma in 1836.

Tribal representatives identified the Lower Chattahoochee River as part of the ancestral territory of the Hitchiti-speaking Lower Creek people. A continuous occupation of Hitchiti speakers in the region from the Rood phase to the Historic period is suggested by archeological and historic records. Most Lower Creek voluntarily relocated or were forcibly removed to Oklahoma in the first half of the 19th century. The Upper Creek nations and nations who were part of the Creek Confederacy, such as the Alabama and Koasati, were also relocated to Oklahoma. Before their final removal to Oklahoma, some Alabama and Koasati established a community in Texas. Consultation evidence indicates that some members of the Federally-recognized nations descended from the Creek Confederacy trace their ancestry specifically to the village of Kasihta.

Officials of New York University College of Dentistry have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of New York University College of Dentistry also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; and Thlopthlocco Tribal Town, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Louis Terracio, New York University College of Dentistry, 345 East 24th St., New York, NY 10010, telephone (212) 998–9917, before November 27, 2009. Repatriation of the human remains to the Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; and Thlopthlocco Tribal Town, Oklahoma, may proceed after that date if no additional claimants come forward.

The New York University College of Dentistry is responsible for notifying the Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; and Thlopthlocco Tribal Town, Oklahoma, that this notice has been published.

Dated: October 7, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–25964 Filed 10–27–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of an associated funerary object in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The associated funerary object was removed from southeast Alaska.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the associated funerary object was made by Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of Central Council Tlingit & Haida Indian Tribes, Kootznoowoo Inc., Sealaska Corporation, Sitka Tribe of Alaska, and Yakutat Tlingit Tribe.

On an unknown date before July 1868, one associated funerary object (69–30–10/2182) was recovered from an unknown area in southeast Alaska. It was purchased by the Peabody Museum from Edward G. Fast in 1869. The associated funerary object is a carved wooden box used to contain cremated human remains.

Edward Fast's catalogue describes this item as a box ''used for receiving the ashes of the dead.'' The Peabody Museum is not in possession of the human remains. The totality of the evidence indicates that this item came from Tlingit territory in the area of southeast Alaska. Edward Fast wrote that he collected all of the items listed in his catalogue from ''that portion of the [Alaskan] territory south of Mount St. Elias'' while he was stationed in Sitka, AK, between October 1867 and July 1868. However, additional historical sources indicate that a portion of Fast's collection came from the Russian American Company's museum and was collected by the Russian scholar I.G. Voznesenskii.

Museum documentation, combined with other sources, indicates that this item was likely recovered from a grave context. This item most likely dates to the Historic period, specifically to the 19th Century. Anthropological and historic information indicate that the area south of Mount St. Elias in the state of Alaska is within the traditional and historic territory of the Tlingit people. Present-day Tlingit people are represented by Sealaska Corporation, a Native corporation representing Tlingit, Haida, and Tsimshian peoples within the southeastern part of Alaska.

Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the one object described above is reasonably believed to have been exclusively made for burial purposes or to contain human remains. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the associated funerary object and the Tlingit, represented by Sealaska Corporation.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with this associated funerary object should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Cambridge, MA 02138, telephone (617) 496–3702, before November 27, 2009. Repatriation of the associated funerary object to Sealaska Corporation may proceed after that date if no additional claimants come forward.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Central Council Tlingit

and Haida Indian Tribes, Kootznoowoo Inc., Sealaska Corporation, Sitka Tribe of Alaska, and Yakutat Tlingit Tribe that this notice has been published.

Dated: October 8, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–25968 Filed 10–27–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Warren Anatomical Museum, Harvard University, Boston, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession and control of the Warren Anatomical Museum, Harvard University, Boston, MA. The human remains were removed from Duval County, FL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Peabody Museum of Archaeology and Ethnology and Warren Anatomical Museum professional staff in consultation with representatives of the Miccosukee Tribe of Indians of Florida, Seminole Nation of Oklahoma, and Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations).

In 1889, human remains representing a minimum of one individual were removed from ''Pablo Beach'' (now Jacksonville Beach), Duval County, FL, by Walter B. Currier. The human remains were donated to the Harvard Odontological Society by Mr. Currier later that same year. In 1892, the Harvard Odontological Society loaned these human remains to the Harvard Dental School Museum. By the late 1960s, the Dental Museum had been dissolved and its remaining holdings were transferred to Harvard Medical School's Francis A. Countway Library of Medicine, which includes the Warren Anatomical Museum. In 2009, the Harvard Odontological Society donated these human remains to the Warren Anatomical Museum for the purpose of NAGPRA implementation. No known individual was identified. No associated funerary objects are present.

Museum documentation identifies the individual as ''Seminole'' from an ''Indian Mound'' in Pablo Beach (now Jacksonville Beach), FL. Osteological information suggests that this individual most likely dates from the Protohistoric to early Historic Periods. The human remains were collected from an area commonly considered to be traditional Seminole territory during those periods. Oral traditions and historic evidence supports the cultural affiliation to Seminole people. The Seminole are represented by the Miccosukee Tribe of Indians of Florida, Seminole Nation of Oklahoma, and Seminole Tribe of Florida.

Officials of the Peabody Museum of Archaeology and Ethnology and Warren Anatomical Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology and Warren Anatomical Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Miccosukee Tribe of Indians of Florida, Seminole Nation of Oklahoma, and Seminole Tribe of Florida.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Ave., Cambridge, MA 02138, telephone (617) 496–2047, before November 27, 2009. Repatriation of the human remains to the Miccosukee Tribe of Indians of Florida, Seminole Nation of Oklahoma, and Seminole Tribe of Florida may proceed after that date if no additional claimants come forward.

The Peabody Museum of Archaeology and Ethnology, Harvard University is responsible for notifying the Miccosukee Tribe of Indians of Florida, Seminole Nation of Oklahoma, and Seminole Tribe of Florida that this notice has been published.

Dated: October 7, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–25967 Filed 10–27–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF INTERIOR

Geological Survey

National Earthquake Prediction Evaluation Council

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 96–472, the National Earthquake Prediction Evaluation Council (NEPEC) will hold a 2-day meeting on November 4 and 5, 2009. The first day will be a joint meeting with the California Earthquake Prediction Evaluation Council (CEPEC). The meeting will be held at the U.S. Geological Survey Offices on the campus of the California Institue of Technology, 525 South Wilson Avenue, Pasadena, California 91106. The Council is comprised of members from academia and the Federal Government. The Council shall advise the Director of the U.S. Geological Survey (USGS) on proposed earthquake predictions, on the completeness and scientific validity of the available data related to earthquake predictions, and on related matters as assigned by the Director. Additional information about the Council may be found at: *http://earthquake.usgs.gov/aboutus/nepec/.*

At the joint meeting on November 4, the Councils will review methods for rapidly estimating the probability of a large earthquake following a possible foreshock or during a swarm of seismicity, review and discuss procedures by which Council findings are to be transmitted to the USGS and to the California Emergency Management Agency (CalEMA), and the format and content of earthquake advisory statements that may be composed and delivered at times of heightened concern. Findings of an International Commission convened by the Italian government to provide advice on ''operational earthquake forecasting'' following the damaging L'Aquila earthquake of April 2009 will be presented. The Councils will also discuss review procedures for the project intended to deliver an updated Uniform California Earthquake Rupture Forecast (UCERF) in summer 2012.

On November 5, the NEPEC will discuss outcomes of the previous day's meeting, plan topics to be explored by the Council in future meetings, and receive brief updates on previous discussion topics.

Workshops and meetings of the National Earthquake Prediction Evaluation Council are open to the public. A draft workshop agenda is

available on request (contact information below). In order to ensure sufficient seating and hand-outs, it is requested that visitors pre-register by October 30. Members of the public wishing to make a statement to the Committee should provide notice of that intention by October 30 so that time may be allotted in the agenda.

DATES: November 4, 2009, commencing at 10:30 a.m. and adjourning at 5:30 p.m., and November 5, 2009, commencing at 8:30 a.m. and adjourning at Noon.

Contact: Dr. Michael Blanpied, Executive Secretary, National Earthquake Prediction Evaluation Council, U.S. Geological Survey, MS 905, 12201 Sunrise Valley Drive, Reston, Virginia 20192. (703) 648–6696, E-mail: *mblanpied@usgs.gov.*

Cost Center Billing Code: 10–7908–99500.

Dated: October 21, 2009.

Peter Lyttle,

Acting Associate Director for Geology.

[FR Doc. E9–25914 Filed 10–27–09; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-MB-2009-N214]
[91100-3740-GRNT 7C]

Meeting Announcement: North American Wetlands Conservation Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The North American Wetlands Conservation Council (Council) will meet to select North American Wetlands Conservation Act (NAWCA) grant proposals for recommendation to the Migratory Bird Conservation Commission (Commission). This meeting is open to the public, and interested persons may present oral or written statements.

DATES: *Council Meeting:* December 9, 2009, 8:30 a.m. to 12 p.m. (noon). If you are interested in presenting information at the North American Wetlands Conservation Council (Council) public meeting, contact the Council Coordinator no later than November 24, 2009.

ADDRESSES: The meeting will be held at the Witt Stephens Jr. Central Arkansas Nature Center, 602 President Clinton Avenue, Little Rock, AR 72201.

FOR FURTHER INFORMATION CONTACT: Mike Johnson, Council Coordinator, by phone at (703) 358-1784; by e-mail at *dbhc@fws.gov*; or by U.S. mail at U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop MBSP 4501-4075, Arlington, VA. 22203.

SUPPLEMENTARY INFORMATION: In accordance with NAWCA (Pub. L. 101-233, 103 Stat. 1968, December 13, 1989, as amended), the State-private-Federal Council meets to consider wetland acquisition, restoration, enhancement, and management projects for recommendation to, and final funding approval by, the Commission.

Project proposal due dates, application instructions, and eligibility requirements are available on the NAWCA Web site at *http://www.fws.gov/birdhabitat/Grants/NAWCA/Standard/US/Overview.shtm.* Proposals require a minimum of 50 percent non-Federal matching funds. The Council will consider U.S. Standard and Mexican grant proposals at the December meeting. The date for the Commission meeting is March 10, 2010.

Dated: October 14, 2009

Paul R. Schmidt,

Assistant Director–Migratory Birds.

[FR Doc. E9–25934 Filed 10–27–09; 8:45 am]

BILLING CODE 4310–55–S

INTERNATIONAL TRADE COMMISSION

[Inv. No. 332–508]

Small and Medium-Sized Enterprises: Overview of Participation in U.S. Exports

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt of a request on October 6, 2009, from the United States Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the Commission instituted investigation No. 332–508, Small and Medium-Sized Enterprises: Overview of Participation in U.S. Exports, for the purpose of preparing the first of a series of three reports requested by the USTR relating to small and medium-sized enterprises.

DATES: *January 12, 2010:* Transmittal of Commission report to the USTR.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Project Leaders Laura Bloodgood (202–708–4726 or *laura.bloodgood@usitc.gov*) or Alexander Hammer (202–205–3271 or *alexander.hammer@usitc.gov*) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: In his letter the USTR requested, under the authority of section 332(g) of the Tariff Act of 1930, that the Commission provide three reports during the next 12 months relating to small- and medium-sized enterprises. In this notice the Commission is instituting the first of three investigations under section 332(g) for the purpose of preparing the first report, which is to be transmitted to the USTR by January 12, 2010. The Commission will institute separate investigations under section 332(g) at later dates for the purpose of preparing the second and third reports.

In the first report the Commission will, as requested, provide an overview of the current state of SMEs' participation in U.S. exports. The report will describe, to the extent possible, characteristics of SMEs, their exports, and their role in generating employment and economic activity in the U.S. economy. The report will focus on merchandise and services exports by U.S. SMEs, providing information on the value of SME exports, products and sectors involved, large markets for U.S. SMEs' exports, and how SME exports have changed over time with respect to these factors. The Commission will also seek to identify gaps in currently available data that may inhibit a more comprehensive understanding of SME participation in export trade.

In the second report the Commission will compare the exporting activity of SMEs in the United States and the European Union, identify barriers to exporting noted by U.S. SMEs and strategies used by SMEs to overcome special constraints and reduce trade costs, and identify the benefits to SMEs from increased export opportunities including those arising from free trade agreements and other trading arrangements. The USTR requested that the Commission transmit this report by July 6, 2010.

In the third report the Commission will, among other things, examine U.S. SMEs engaged in providing services, including the characteristics of firms that produce tradable services, growth in services exports, and the differences between SME and large services exporters. It will also examine U.S. goods and services exports by SMEs and identify trade barriers that may disproportionately affect SME export performance, as well as possible linkages between exporting and SME performance. In addition, the report will identify how data gaps might be overcome to enhance our understanding of SMEs in service sector exports. The USTR requested that the Commission transmit this report by October 6, 2010.

Public Hearing: The Commission does not plan to hold a public hearing in connection with this investigation, but expects to hold one or more hearings in the course of preparing the second and/or third reports. The time and place of those hearings will be announced at a later date.

Written Submissions: Interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m. on November 17, 2009. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

In his request letter, the USTR stated that his office intends to make the Commission's reports available to the public in their entirety, and asked that the Commission not include any confidential business information or national security classified information in the reports that the Commission transmits to his office. Any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in a manner that would reveal the operations of the firm supplying the information.

Issued: October 23, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–25947 Filed 10–27–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–641]

Certain Variable Speed Wind Turbines and Components Thereof; Notice of Commission Determination To Extend the Deadline for Public Submissions on Remedy, the Public Interest, and Bonding, and for Responses to All Remedy, Public Interest, and Bonding Submissions

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend the deadline for public submissions on remedy, the public interest, and bonding, and for responses to all remedy, public interest, and bonding submissions in the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337'').

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on March 31, 2008, based upon a complaint filed on behalf of General Electric Company of Fairfield, Connecticut on February 7, 2008. 73 FR 16910. The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain variable speed wind turbines and components thereof that infringes claims 121–125 of U.S. Patent No. 5,083,039 and claims 1–12, 15–18, and 21–28 of U.S. Patent No. 6,921,985.

On August 7, 2009, the ALJ issued his final ID finding a violation of section 337.

On October 8, 2009, the Commission issued notice of its decision to review-in-part the final ID, requesting briefing on the issues on review, including certain specific questions, and on remedy, the public interest, and bonding.

On October 19 and 20, 2009, respectively, Iberdrola Renewables filed a motion and corrected motion to extend the date for public submissions until two weeks after the issuance of the public version of the final initial determination and recommended determination on remedy, the public interest, and bonding (''ID'').

The public version of the ID issued on October 21, 2009.

In light of these circumstances, the Commission has determined as follows: (a) The public may submit comments on remedy, the public interest, and bonding until November 2, 2009. (b) The parties and the public may reply to any submissions on remedy, the public interest, and bonding until November 9, 2009. (c) The parties' schedule for briefing on any issues related to violation is unaffected by this extension.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and under sections 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.50).

Issued: October 23, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–26019 Filed 10–27–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–09–029]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 6, 2009 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–470–471 and 731–TA–1169–1170 (Preliminary) (Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from China and Indonesia)—briefing and vote. (The Commission is currently scheduled to transmit its determinations to the Secretary of Commerce on or before November 9, 2009; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before November 17, 2009.)
5. Inv. Nos. 701–TA–472 and 731–TA–1171–1172 (Preliminary) (Certain Standard Steel Fasteners from China and Taiwan)—briefing and vote. (The Commission is currently scheduled to transmit its determinations to the Secretary of Commerce on or before November 9, 2009; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before November 17, 2009.)
6. Inv. Nos. 701–TA–473 and 731–TA–1173 (Preliminary) (Certain Sodium and Potassium Phosphate Salts from China)—briefing and vote. (The Commission is currently scheduled to transmit its determinations to the Secretary of Commerce on or before November 9, 2009; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before November 17, 2009.)
7. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: October 26, 2009.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E9–26104 Filed 10–26–09; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations (CFR), 1301.34(a), this is notice that on August 27, 2009, Formulation Technologies LLC., 11400 Burnet Road, Suite 4010, Austin, Texas 78758, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Fentanyl (9801), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance for analytical characterization, secondary packaging, and for distribution to clinical trial sites.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than November 27, 2009.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: October 20, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–25862 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

This is notice that on July 9, 2009, Cody Laboratories Inc., 601 Yellowstone Avenue, Cody, Wyoming 82414–9321, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Raw Opium (9600)	II
Concentrate of Poppy Straw (9670).	II

The company plans to import narcotic raw materials for manufacturing and further distribution to its customers. The company is registered with DEA as a manufacturer of several controlled substances that are manufactured from raw opium, poppy straw, and concentrate of poppy straw.

As explained in the Correction to Notice of Application pertaining to Rhodes Technologies, 72 FR 3417 (2007), comments and requests for hearings on applications to import narcotic raw material are not appropriate.

As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745), all applicants for registration to import a basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b),(c),(d),(e), and (f) are satisfied.

Dated: October 20, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–25905 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

This is notice that on September 18, 2009, Clinical Supplies Management, 342 42nd Street South, Fargo, North Dakota 58103, made application to the Drug Enforcement Administration (DEA) for registration as an importer of Poppy Straw Concentrate (9670), a basic class of controlled substance listed in schedule II.

The company plans to import an ointment for the treatment of wounds which contains trace amounts of controlled substances normally found in poppy straw concentrate which will be packaged and labeled for clinical trials.

As explained in the Correction to Notice of Application pertaining to Rhodes Technologies, 72 FR 3417 (2007), comments and requests for hearings on applications to import narcotic raw material are not appropriate.

As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745), all applicants for registration to import a basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b),(c),(d),(e), and (f) are satisfied.

Dated: October 16, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–25903 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on September 16, 2009, Hospira Inc., 1776 North Centennial Drive, McPherson, Kansas 67460–1247, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of Remifentanil (9739), a basic class of controlled substance listed in schedule II.

The company plans to import Remifentanil for use in dosage form manufacturing.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than November 27, 2009.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745), all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: October 21, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–26000 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations (CFR), 1301.34(a), this is notice that on September 4, 2009, Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78665–2402, made application via the Internet to the Drug Enforcement Administration (DEA) to be registered as an importer of 5-Methoxy-N,N-diisopropyltryptamine (7439), a basic class of controlled substance listed in schedule I.

The company plans to import small quantities of the listed controlled substance for the manufacture of analytical reference standards.

Any bulk manufacturers who are presently, or are applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement

Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than November 27, 2009.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: October 21, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–26001 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated June 3, 2009, and published in the **Federal Register** on June 9, 2009 (74 FR 27349), Mylan Pharmaceuticals Inc., 781 Chestnut Ridge Road, Morgantown, West Virginia 26505, made application by letter to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Methylphenidate (1724)	II
Fentanyl (9801)	II

The company plans to import the listed controlled substances for analytical research and clinical trials.

Two objections and one request for a hearing were received. The request for a hearing has been withdrawn. DEA has examined the other objections to the registration and has determined that the objections and comments received are not valid for this specific situation. The company will import finished dosage forms for clinical trials and analytical comparison only. They will not purchase raw material for the manufacture of finished goods and/or commercial distribution. No other use of the imported material in question will be allowed.

DEA has considered the factors in 21 U.S.C. 823(a) and § 952(a) and determined that the registration of Mylan Pharmaceuticals Inc., to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Mylan Pharmaceuticals Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: October 16, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–25888 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 17, 2009, and published in the **Federal Register** on April 29, 2009, (74 FR 19598), Archimica, Inc., 2460 W. Bennett Street, Springfield, Missouri 65807–1229, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Lisdexamfetamine (1205), a basic class of controlled substance listed in schedule II.

The company plans to manufacture the controlled substance in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Archimica, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Archimica, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: October 20, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–25891 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated June 3, 2009, and published in the **Federal Register** on June 9, 2009 (74 FR 27349), Mylan Technologies Inc., 110 Lake Street, Saint Albans, Vermont 05478, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Methylphenidate (1724)	II
Fentanyl (9801)	II

The company plans to import the listed controlled substances for analytical research and clinical trials.

Two objections and one request for a hearing were received. The request for a hearing has been withdrawn. DEA has examined the other objections to the registration and has determined that the objections and comments received are not valid for this specific situation. The company will import finished dosage forms for clinical trials and analytical comparison only. They will not purchase raw material for the manufacture of finished goods and/or commercial distribution. No other use of the imported material in question will be allowed.

DEA has considered the factors in 21 U.S.C. 823(a) and § 952(a) and determined that the registration of Mylan Pharmaceuticals Inc., to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties,

conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Mylan Pharmaceuticals Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and § 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: October 20, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–25908 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated June 22, 2009, and published in the **Federal Register** on June 29, 2009, (74 FR 31049), Noramco, Inc., Division of Ortho-McNeil, Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application by letter to the Drug Enforcement Administration (DEA) to be registered as an importer of Tapentadol (9780), a basic class of controlled substance listed in schedule II.

The company plans to import an intermediate of the basic class listed for the bulk manufacture of Tapentadol which it will distribute to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Noramco, Inc. to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Noramco, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and § 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: October 16, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–25906 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 18, 2009, Archimica, Inc., 2460 W. Bennett Street, Springfield, Missouri 65807–1229, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Tapentadol (9780), a basic class of controlled substance listed in schedule II.

The company plans to manufacture the listed controlled substance in bulk for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 28, 2009.

Dated: October 21, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–26003 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 26, 2009, Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Gamma hydroxybutyric acid (2010).	I
Amphetamine (1100)	II
Methylphenidate (1724)	II

The company plans to manufacture bulk products for finished dosage units and distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 28, 2009.

Dated: October 16, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–25890 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 31, 2009, Lin Zhi International Inc., 687 North Pastoria Avenue, Sunnyvale, California 94085, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
3,4–Methylenedioxymethamphetamine (MDMA) (7405).	I
Cocaine (9041)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II

The company plans to manufacture the listed controlled substances as bulk reagents for use in drug abuse testing.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 28, 2009.

Dated: October 16, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–25889 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 16, 2009, American Radiolabeled Chemical, Inc., 101 Arc Drive, St. Louis, Missouri 63146, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Dimethyltryptamine (7435)	I
1-[1-(2-Thienyl)cyclohexyl]piperidine. (7470)	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Metazocine (9240)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Phenazocine (9715)	II
Fentanyl (9801)	II

The company plans to manufacture small quantities of the listed controlled substances as radiolabeled compounds for biochemical research.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 28, 2009.

Dated: October 16, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–25884 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 26, 2009, Cayman Chemical Company, 1180 East Ellsworth Road, Ann Arbor, Michigan 48108, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the basic classes of controlled substances listed in schedule I:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I

The company plans to manufacture small quantities of marihuana derivatives for research purposes. In reference to drug code 7360 (Marihuana), the company plans to bulk manufacture cannabidiol. In reference to drug code 7370 (Tetrahydrocannabinols), the company will manufacture a synthetic THC. No other activity for this drug code is authorized for registration.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 28, 2009.

Dated: October 16, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–25899 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 27, 2009, Varian, Inc., Lake Forest, 25200 Commercentre Drive, Lake Forest, California 92630–8810, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Phencyclidine (7471)	II
1-Piperidinocyclohexan-carbonitrile (8603)	II
Benzoylecgonine (9180)	II

The company plans to manufacture small quantities of the listed controlled substances for use in diagnostic products.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 28, 2009.

Dated: October 16, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–25895 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 9, 2009, Aldrich Chemical Company Inc., DBA Isotec, 3858 Benner Road, Miamisburg, Ohio 45342–4304, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Methaqualone (2565)	I
Ibogaine (7260)	I
Tetrahydrocannabinols (7370)	I
2,5-Dimethoxyamphetamine (7396).	I
Psilocyn (7438)	I
Normorphine (9313)	I
Acetylmethadol (9601)	I
Alphacetylmethadol except levo-alphacetylmethadol (9603).	I
Normethadone (9635)	I
Norpipanone (9636)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexane-carbonitrile (8603).	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Meperidine intermediate-A (9232)	II
Meperidine intermediate-B (9233)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk, (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II

The company plans to manufacture small quantities of the listed controlled substances to produce isotope labeled standards for drug testing and analysis.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 28, 2009.

Dated: October 20, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–25893 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 10, 2009, Johnson Matthey Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Difenoxin (9168)	I
Propiram (9649)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a controlled substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 28, 2009.

Dated: October 21, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–26002 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 15, 2009, and published in the **Federal Register** on June 23, 2009, (74 FR 29720), Noramco Inc., Division of Ortho-McNeil, Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Noroxymorphone (9668), a basic class of controlled substance listed in schedule II.

The company plans to bulk manufacture the above listed controlled substance for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C 823(a) and determined that the registration of Noramco, Inc. to manufacture the listed basic class of controlled substance is consistent with the public interest at

this time. DEA has investigated Noramco, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: October 16, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–25887 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated July 1, 2009, and published in the **Federal Register** on July 13, 2009, (74 FR 33476), Organix Inc., 240 Salem Street, Woburn, Massachusetts 01801, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Marihuana (7360), a basic class of controlled substance listed in schedule I.

The company plans to manufacture a synthetic cannabinol in bulk for sale to its customers for research purposes. No other activity for this drug code is authorized for this registration.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Organix Inc. to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Organix Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: October 20, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–25892 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Registration

By Notice dated June 22, 2009, and published in the **Federal Register** on June 26, 2009, (74 FR 30621), Wildlife Laboratories Inc., 1401 Duff Drive, Suite 400, Fort Collins, Colorado 80524, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Carfentanil (9743), a basic class of controlled substance listed in schedule II.

The company will manufacture the above listed controlled substance for sale to veterinary pharmacies, zoos, and for other animal and wildlife applications.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Wildlife Laboratories Inc. to manufacture the listed basic class(es) of controlled substance(s) is consistent with the public interest at this time. DEA has investigated Wildlife Laboratories, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class(es) of controlled substance(s) listed.

Dated: October 16, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–25886 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 5, 2009 and published in the **Federal Register** on February 11, 2009, (74 FR 6921), Siegfried (USA), Inc., 33 Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Dihydromorphine (9145)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Oripavine (9330)	II
Oxymorphone (9652)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Siegfried (USA), Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Siegfried (USA), Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: October 16, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–25885 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 15, 2009, and published in the **Federal Register** on June 23, 2009, (74 FR 29718), Austin Pharma LLC., 811 Paloma Drive, Suite A, Round Rock, Texas 78665–2402, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Alphamethadol (9605)	I
Nabilone (7379)	II
Methadone (9250)	II
Methadone Intermediate (9254)	II
Levo-alphacetylmethadol (9648)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

In reference to drug code 7360 (Marihuana), the company plans to bulk manufacture cannabidiol as a synthetic intermediate. This controlled substance will be further synthesized to bulk manufacture a synthetic THC (7370). No other activity for this drug code is authorized for this registration.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Austin Pharma LLC. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Austin Pharma LLC. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: October 21, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–25882 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 15, 2009, and published in the **Federal Register** on June 23, 2009, (74 FR 29717), Chattem Chemicals Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Methadone (9250)	II
Methadone intermediate (9254)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 USC 823(a) and determined that the registration of Chattem Chemicals Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Chattem Chemicals Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 USC 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: October 20, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–25901 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 22, 2009, and published in the **Federal Register** on June 30, 2009, (74 FR 31314), Chattem Chemicals Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
4–Methoxyamphetamine (7411)	I
Dihydromorphine (9145)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Pentobarbital (2270)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Chattem Chemicals Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Chattem Chemicals Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the

company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: October 20, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–25894 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement: A ''Systems Approach'' for Workforce Performance—Curriculum Development

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a cooperative agreement.

SUMMARY: The National Institute of Corrections (NIC) is soliciting proposals from organizations, groups or individuals to enter into a cooperative agreement to develop and field test a 36-hour curriculum to train a multi-disciplinary staff in state correctional agencies and prison systems. The time of the cooperative agreement is for a twelve month period. Two training pilots at sites selected by NIC will be completed no later than September 30, 2010, with a final curriculum delivered to NIC no later than December 30, 2010.

The training curriculum will focus on the concept of agency management and operations as a systemic and collaborative effort of all stakeholders in the system. It will include updated and contemporary elements essential for managing an agency and institution to achieve its statutory mandates and mission in an increasingly challenging and budget lean environment. It will include modules on organizational change and building a culture for collaboration. The ultimate goal of the curriculum will be to provide management teams with the tools to manage their operations and demonstrate efficient, effective, safe and secure practices for staff, inmates and the general public.

DATES: Applications must be received by 2 p.m. EDT on Monday, November 30, 2009.

ADDRESSES: Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date.

Hand delivered applications should be brought to 500 First Street, NW., Washington, DC 20534. At the front desk, dial 7–3106, extension 0 for pickup.

Faxed applications will not be accepted. Electronic applications can be submitted via *www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this announcement can be downloaded from the NIC Web page at *www.nicic.gov.*

All technical or programmatic questions concerning this announcement should be directed to Michael Dooley, Correctional Program Specialist, Prisons Division, National Institute of Corrections, at *mdooley@bop.gov.*

SUPPLEMENTARY INFORMATION:

Overview: The overall goal of the initiative is to design, develop, field test and revise, as needed, a training curriculum that will provide a multi-disciplinary staff in state correctional agencies and prison systems the competencies, skills and tools to leverage the performance of their operations and demonstrate efficient, effective, safe and secure practices for staff, inmates and the general public.

Background: Managing prisons in today's climate presents correctional administrators and prison officials' particular challenges. First, and likely at the forefront, is the problem of shrinking state revenues forcing drastic cuts in funding. The impact has been far reaching, from delaying expansions needed to accommodate a growing population, closing units or even whole facilities to stretching staffing ratios compromising security and safety (2007/2008 NIC Needs Assessment). Many agencies are under mounting pressure to release large volumes of prisoners across communities within their jurisdictions.

Second, the population demographic has become increasingly complex. A growing women offender population presents unique gender challenges for prison management who continue to operate with a bias toward the male offender. A growing number of offenders diagnosed with mental illness, sentenced and placed in prison present very difficult and unique challenges to both custody and case management staff. These offenders present a serious management, safety and budget problem for correctional administrators.

Another demographic that has already begun to pose problems, especially in terms of cost, is the ''aging'' population resulting from the past three decades of ''tough on crime'' legislation. This population and its impact will continue to intensify over the next two decades. Other issues facing prison administrators are: Coping with the changing generational workforce with different values and perspectives, some of which are not conducive to effective and efficient management; the age old cultural dissonance between custody and treatment staff compounded by expanding roles and expectations of each; and an increased demand for accountability and to open a typically closed system to both the media and the public.

The list of issues for agency and prison management goes on. The overarching need for agencies facing increasingly complex systems and unique challenges is to adopt performance-based behaviors, processes and standards, and deploy practices and strategies that embrace the multiple disciplines of stakeholders and functions that make up an agency and prison operation.

Another NIC related project currently underway, ''Identifying Characteristics of High Performing Correctional Organizations (HCPO),'' will inform and serve as a foundational element for curriculum work done under this project. The HCPO project is focused on developing a methodology to design a model and assessment tool to identify and bridge gaps between current performance and optimal performance in terms of efficiency, effectiveness and accountability in correctional organizations. For more information on this project, please visit the HCPO Blog at *http://NICIC.gov/HPCO.*

Purpose/Outcomes: The overarching purpose of this initiative is to promote and help correctional agencies develop the organizational competence to implement systematic, seamless and ''high performing'' practices resulting in increased accountability for enhanced public safety and fiscal responsibility. The following intended outcomes for this project are: Agency operational practices will improve next to performance standards identified by system stakeholders with an action learning plan strategy; Agency/institutional and cultural barriers will be reduced/eliminated as evidenced by an increase in collaborative behaviors and collective performance among stakeholders; Safety and security in an agency/institution will increase; Agencies/institutions will adopt key elements and standards of a learning and performance-based culture.

Scope of Work: Under this cooperative agreement, the single goal is the development, testing, and revision of a curriculum to train a multi-disciplinary staff in State correctional agencies and prison systems.

A description of the products and deliverables for the project include a training curriculum titled: A ''Systems Approach'' for Workforce Performance. The Curriculum package will contain: (1) An instructor/facilitator's guide with associated tools, materials and resources; (2) A participant resource guide to be used in conjunction with all training activities; (3) Instructional aides and materials including presentation slide shows, charts, handouts, case studies, assessments, *etc.* to support instruction and facilitation.

Training Program Description: The training program has been announced in NIC's Service Plan—''Technical Assistance, Information, and Training for Adult Corrections'', for delivery during FY 2010. A description follows, or may be downloaded online at *http://nicic.gov/Library/023761,* refer to page 52.

This 36-hour ''agency exclusive'' strategy development program will focus on the concept of agency management and operations as a systemic and collaborative effort of all stakeholders in addressing policies, procedures, and practices in their correctional system. It will include updated and contemporary elements essential for managing an agency in an increasingly challenging and budget-conscious environment. It will reveal and promote evidence-based practice that results in both short-term offender management and long-term public safety. The program includes modules on organizational change and building an environment of collaboration. The objective is to provide management teams with the tools and techniques necessary for coordinating their operations and to demonstrate a systemic approach in developing, maintaining, and evaluating those services and operations for efficiency and effectiveness.

The program can accommodate up to 30 participants identified by the host agency. The agency should be able to provide onsite meeting space for both the main sessions and breakout sessions. NIC will provide the facilitators and materials.

The targeted audience for the training is agency executive staff, including the director, deputy/assistant directors, regional directors and program administrators, wardens/superintendents, and designated program and security managers from a selected correctional agency who are responsible for agency-wide operations and programs.

Training Program Goals: The following are the intended outcomes for participants completing the training program: Adopt and implement organizational and individual ''performance-based'' behaviors, strategies and techniques; Adopt and implement an established set of performance standards and benchmarks supported by organizational literature and research, and identified by relevant NIC workgroups on agency performance; Identify system performance barriers and gaps, and implement, evaluate and revise strategies to close these gaps; Assess agency/institutional cultural characteristics and implement strategies to leverage healthy cultural behaviors, limit/reduce unhealthy cultural barriers, and increase collaborative behaviors and the collective performance among agency/institutional stakeholders; Develop and implement strategies to promote an integrated, systems approach to the operations and practices in an agency/institution leading to substantially improved operational efficiencies and practices; Assess and evaluate organizational behavior and practices that embrace ''organizational learning'' and implement strategies to enhance or adopt the key elements and standards of a learning and performance-based culture.

Requirements: The recipient of this cooperative agreement award must, at a minimum, do the following within the scope of this project: Consult with the Correctional Program Specialist (CPS) assigned to manage the cooperative agreement to ensure understanding of, and agreement on, the scope of work to be performed; Submit a detailed work plan with time lines and milestones for accomplishing project activities to CPS for approval prior to any work being performed under this agreement; Designate a point of contact, which would serve as the conduit of information and work experience between the CPS and the award recipient; Conduct a comprehensive needs assessment and literature review to support the basis of the curriculum; Review relevant NIC curriculum and/or documents in the development of the curriculum; Consult with the CPS on both proposed content and training strategies. (The NIC/CPS will have final approval of both); Conduct a field test of the curriculum. This will consist of two pilot trainings to be done at two agencies selected by NIC. (**Note:** all participant associated costs will be the responsibility of the agency receiving the training. It is expected that the recipient of the cooperative agreement award will budget for the cost of training staff); Consult with the CPS concerning trainers for program delivery with NIC having final approval of training program faculty; Consult with the CPS on evaluation methodology; and provide evaluation data with recommendations for revisions to the curriculum.

Curriculum Specifications: The curriculum must be designed and developed adhering to the following standards and specifications: The curriculum and training design is consistent with and embraces the Instructional Theory into Practice (ITIP) model. A reference to this model can be found at the following link on the NIC Web site *http://nicic.gov/Library/010714;* Written products are developed to support the training; The curriculum facilitation guide is written using a standard curriculum document format to include at a minimum: Module/Sections and Titles, Performance Objectives/Expectations, Learning Activities Guide, Practice/Application, Evaluation Method and Resources needed to conduct training activities; References are cited that support curriculum content and concepts; Copyright permissions are secured for the use of copyright protected publications and materials with a minimum usage of three years; All documents must be delivered electronically in both MS Word 2003 or higher and Adobe PDF; A ''camera print ready'' hard copy must also be submitted; NIC will have final approval of the format, look and organization of the curriculum documents.

Required Expertise: The successful applicant will possess knowledge, skills and experience in the following areas: Knowledge of organizational development, systems theory, organizational behavior, team development, organizational change, and the ability to demonstrate the application of the learning concepts in a correctional agency/prison system; Knowledge and experience with correctional agency/prison system operations and cultural dynamics; Knowledge, skills and experience in curriculum development based on adult learning theory and the Instructional Theory into Practice (ITIP) format; Knowledge and expertise in a variety of instructional delivery strategies to include, but not be limited to, instructor-led e-learning including asynchronous computer/Web-based, instructor-led synchronous Web-based, social learning networks, Web 2.0 applications, *etc.;* Skilled in designing

training curriculum linked to training objectives; Knowledge of training evaluation methods; and Effective written and oral communication skills.

Application Requirements: Applications should be concisely written, typed double spaced and reference the ''NIC Funding Opportunity Number'' and Title provided in this announcement. The application package must include: OMB Standard Form 424, Application for Federal Assistance; a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period of fiscal year that the applicant operates under (*e.g.,* July 1 through June 30), an outline of projected costs, and the following forms: OMB Standard Form 424A, Budget Information—Non Construction Programs, OMB Standard Form 424B, Assurances—Non Construction Programs (available at *www.grants.gov*), and DOJ/NIC Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (available at *http://www.nicic.gov/Downloads/PDF/certif-frm.pdf.*)

Applications may be submitted in hard copy, or electronically via *www.grants.gov.* If submitted in hard copy, there needs to be an original and three copies of the full proposal (program and budget narratives, application forms and assurances). The original should have the applicant's signature in blue ink. The program narrative text must be limited to 15 double spaced pages, exclusive of resumes and summaries of experience. Please do not submit full curriculum vitae.

A web-conference will be conducted for persons with the intent to respond to the solicitation on Tuesday, November 17, 2009 at 12 p.m. EDT. During this conference, NIC project managers will respond to questions regarding the solicitation and expectation of work to be performed. Please notify Michael Dooley electronically at *mdooley@bop.gov* by 12 p.m. noon EDT on Friday, November 13, 2009, regarding your interest in participating in the conference. You will be provided with the Web link, call-in number and instructions for accessing the session.

Authority: Public law 93–415.

Funds Available: NIC is seeking the applicant's best ideas regarding accomplishment of the scope of work and the related costs for achieving the goals of this solicitation. Funds may only be used for the activities that are linked to the desired outcome of the project.

This project will be a collaborative venture with the NIC Prisons Division.

Eligibility of Applicants: An eligible applicant is any private agency, educational institution, organization, individual or team with expertise in the described areas.

Review Considerations: Applications received under this announcement will be subjected to a 3 to 5 person NIC Peer Review Process.

Note: NIC will NOT award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry.

A DUNS number can be received at no cost by calling the dedicated toll-free DUNS number request line at 1–800–333–0505 (if you are a sole proprietor, you would dial 1–866–705–5711 and select option 1).

Number of Awards: One.

NIC Funding Opportunity Number: 10P07. This number should appear as a reference line in the cover letter, in box 4a of Standard Form 424, and outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.601.

Executive Order 12372: This project is not subject to the provisions of Executive Order 12372.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. E9–25960 Filed 10–27–09; 8:45 am]

BILLING CODE 4410–36–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60840; File No. SR–Phlx–2009–77]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by NASDAQ OMX PHLX, Inc. Regarding Listing Certain Options at $1 Strike Price Intervals Below $200 and Listing Certain Options at $2.50 Strike Price Intervals Below $200

October 20, 2009.

On September 4, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] a proposed rule change to permit the listing of certain option series at $1 and $2.50 strike price intervals for strike prices below $200. The proposed rule change was published for comment in the **Federal Register** on September 16, 2009.[4] There were no comments on the proposed rule change. This order approves the proposed rule change.

The Exchange proposes to amend Phlx Rules 1012 and 1101A to permit the Exchange to list eight index options (the ''$1 Indexes'') at $1 strike price intervals below $200.[5] The Exchange believes that $1 strike price intervals in these option series will provide investors with greater flexibility by allowing them to establish positions that are better tailored to meet their investment objectives. The Exchange also proposes to amend Rule 1101A to permit the Exchange to list options on two indexes at $2.50 strike price intervals below $200.[6]

For initial series in options on the $1 Indexes, the Exchange will list at least two strike prices above and two strike prices below the current value of the $1 Index at or about the time a series is opened for trading on the Exchange. Series listed at the time of initial listing must be within five (5) points of the closing value of the $1 Index on the preceding day. The Exchange will be permitted to list up to sixty (60) additional series, subject to certain guidelines,[7] when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when the underlying $1 Index moves substantially from the initial exercise price or prices. In all cases, however, $1 strike price intervals may be listed on $1 Index options only where the strike price is less than $200. The Exchange is also proposing to set forth a delisting

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 60637 (September 9, 2009), 74 FR 47634 (''Notice'').

[5] The Exchange is proposing $1 strike price intervals for the following sector indexes: PHLX Gold/Silver Index (XAU), PHLX Housing Index (HGX), PHLX Oil Service Index (OSX), SIG Oil Exploration & Production Index™ (EPX℠), PHLX Semiconductor Index (SOX), KBW Bank Index (BKX),[5] SIG Energy MLP Index℠ (SVO™), and Reduced Value Russell 2000® Index (RMN).

[6] The Exchange is proposing $2.50 strike price intervals for the following sector indexes: The NASDAQ China Index℠ (CNZ) and the Reduced Value Russell 2000® Index (RMN).

[7] Additional strike prices shall be within thirty percent (30%) above or below the closing value of the $1 Index; however, the Exchange will be permitted to open additional strike prices that are more than 30% above or below the current $1 Index value provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account will not be considered when determining customer interest. *See* Proposed Rule 1101A Commentary .03(b).

policy with respect to $1 Index options.[8]

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange stated in its proposal that it has received numerous requests from traders of the $1 Index options for series listed in $1 strike price increments. The Exchange believes that allowing the listing of these options at $1 increments as proposed, particularly given the recent decline in values of the $1 Indexes, should provide investors with added flexibility in the trading of options and further the public interest by allowing investors to establish positions that are better tailored to meet their investment objectives.

The Commission notes that the Exchange has analyzed its capacity and represented its belief that it and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with listing and trading $1 strike intervals options series on the $1 Indexes.

In light of the foregoing, the Commission believes that the proposal strikes a reasonable balance between the Exchange's desire to accommodate market participants by offering a wider array of investment opportunities and the need to avoid unnecessary proliferation of options series and the corresponding increase in quotes. The Commission expects that the Exchange will monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's and vendors' automated systems.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–Phlx–2009–77) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–25826 Filed 10–27–09; 8:45 am]

BILLING CODE 8011–01–P

[8] For each $1 Index the Exchange will regularly review series that are outside a range of five (5) strikes above and five (5) strikes below the current value of the $1 Index and may delist series with no open interest in both the put and the call series having a: (i) Strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month. However, customer requests to add strikes and/or maintain strikes in $1 Index options in series eligible for delisting may be granted.

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60853; File No. SR–Phlx–2009–89]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Retroactively Waiving the Cancellation Fee

October 21, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on October 13, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to retroactively waive the Cancellation Fee for the months of August and September 2009 and issue a rebate to member organizations for Cancellation Fees that were assessed in those months.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to rebate monies previously assessed for the Cancellation Fee in August and September 2009 to all member organizations. During the months of August and September 2009, member organizations were assessed $2.10 per order for each cancelled electronically-delivered [3] order in excess of the number of orders executed on the Exchange by a member organization in a given month.[4] The Exchange calculates the Cancellation Fee by aggregating all orders and cancels received by the Exchange and totaling those orders by member organization. The Exchange aggregates and counts as one executed customer [5] option order all customer orders from the same member organization that are executed in the same series on the same side of the market at the same price within a 300 second period.[6] The

[3] *See* Exchange Rule 1080.

[4] *See* Securities Exchange Act Release No. 60046 (June 4, 2009), 74 FR 28083 (June 12, 2009) (SR–Phlx–2009–44) (assessing $2.10 per order for each cancelled electronically-delivered order and limit the applicability of the Cancellation Fee to cancelled electronically delivered customer orders.)

[5] *See e.g.* Exchange Rule 1080(b)(i)(A) which defines customer order as [sic] ''* * * is any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.''

[6] *See* Securities Exchange Act Release No. 60188 (June 29, 2009), 74 FR 32986 (July 9, 2009) (SR–Phlx–2009–48) (aggregating options orders within a specified time period for the purpose of assessing the Cancellation Fee). At least 500 cancellations must be made in a given month by a member organization in order for a member organization to be assessed the Cancellation Fee. The Cancellation Fee is not assessed in a month in which fewer than 500 electronically-delivered orders are cancelled. Simple cancels and cancel-replacement orders are the types of orders that are counted when calculating the number of electronically-delivered

following order activity is exempt from the Cancellation Fee: (i) Pre-market cancellations; [7] (ii) Complex Orders [8] that are submitted electronically; (iii) unfilled Immediate-or-Cancel [9] customer orders; and (iv) cancelled customer orders that improved the Exchange's prevailing bid or offer (PBBO) market at the time the customer orders were received by the Exchange.

The Exchange assessed the applicable Cancellation Fee of $2.10 per order on member organizations, as specified above, during the months of August and September 2009. Exchange members have experienced various issues related to the Cancellation Fee including staffing issues, delays in implementation of certain Exchange reports which notify members of cancellations, and other communication issues. The Exchange previously waived its Cancellation Fee for July 2009 because it became aware of member confusion with the calculation of the fee.[10] The Exchange explained the Cancellation Fee to member organizations [11] at that time and suggested member organizations subscribe to receive the daily cancellation report in order to properly track their cancellation activity for a given month. The Exchange more recently became aware of issues related to the receipt and contents of the daily cancel reports which the Exchange believes may have created confusion among certain member organizations as to the number of cancels that existed in a given month. The Exchange has once again reached out to its members to rectify existing issues with the daily cancel report and to determine if the reports properly reflected the information necessary for the firms to determine the number of cancels in a given month. Additionally, the Exchange will issue an Options Trader Alert to further clarify the tools available to member organizations to notify them of the cancellations and clarify that the Cancellation Fee will be applicable as of October 1, 2009. The Exchange believes that member organizations have been adequately educated as to the Exchange's current Cancellation Fee and its applicability for future assessments.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b)(4) of the Act [13] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the proposal to retroactively waive the Cancellation Fee for the months of August and September 2009 and issue a rebate to all member organizations for fees previously assessed in August and September 2009 is fair and equitable in that the waiver will apply to all member organizations. The Exchange believes that it has educated its members as to the applicability of the current Cancellation Fee and any implementation issues have been addressed and remedied for future assessment of this fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change establishes or changes a due, fee, or other charge applicable only to a member pursuant to Section 19(b)(3)(A)(ii) of the Act [14] and Rule 19b–4(f)(2) [15] thereunder. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2009–89 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2009–89. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

orders. (A cancel-replacement order is a contingency order consisting of two or more parts which require the immediate cancellation of a previously received order prior to the replacement of a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety the replacement order is automatically canceled or reduced by such number.) *See* Exchange Rule 1066(c)(7). Also, pre-market cancellations are not included in the calculation of the Cancellation Fee as well as Complex Orders that are submitted electronically. *See* Securities Exchange Act Release Nos. 53226 (February 3, 2006), 71 FR 7602 (February 13, 2006) (SR–Phlx–2005–92); and 53670 (April 18, 2006), 71 FR 21087 (April 24, 2006) (SR–Phlx–2006–21).

[7] *See* Securities Exchange Act Release Nos. 53226 (February 3, 2006), 71 FR 7602 (February 13, 2006) (SR–Phlx–2005–92); and 53670 (April 18, 2006), 71 FR 21087 (April 24, 2006) (SR–Phlx–2006–21). *See also* Securities Exchange Act Release No. 60046 (June 4, 2009), 74 FR 28083 (June 12, 2009) (SR–Phlx–2009–44).

[8] A Complex Order is composed of two or more option components and is priced as a single order (a ''Complex Order Strategy'') on a net debit or net credit basis.

[9] An Immediate-or-Cancel (IOC) order is a limit order that is to be executed in whole or in part upon receipt. Any portion not so executed shall be cancelled.

[10] *See* Securities Exchange Act Release No. 60606 (September 1, 2009), 74 FR 46264 (September 8, 2009) (SR–Phlx–2009–76).

[11] NASDAQ OMX PHLX staff contacted all member organizations who were assessed a Cancellation Fee in July 2009 concerning the applicability and calculation of this fee prior to August 1, 2009. Additionally, the Exchange produces a daily cancellation fee reconciliation report as a tool for member organizations to monitor their cancel volume and potential charges.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2009–89 and should be submitted on or before November 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–25827 Filed 10–27–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60855; File No. SR–NYSEArca–2009–92]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Obligations of Lead Market Makers

October 21, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 14, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make changes to NYSE Arca Rule 6.82(c)—Obligations of Lead Market Makers. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Options Rule 6.82(c)(5) to remove the requirement that an LMM designate a back-up LMM and add a provision obligating an LMM to notify a Trading Official in the event the LMM is not accessible. In addition, the Exchange proposes that if such LMM is not accessible, the Exchange may designate a back-up LMM.

The requirement that each LMM designates a back-up LMM was initially established to help ensure that there would be adequate liquidity in a given issue in the event the appointed LMM was unavailable. At the time, the NYSE Arca options market was strictly floor-based, many Lead Market Makers were individuals, and there may have only been a few Market Makers in any given issue. Therefore, it was necessary to have a designated back-up LMM ready to take over as LMM, should the appointed LMM be unable to fulfill its obligations. In return for fulfilling the obligations of the LMM, the back-up LMM (when acting in that capacity) would also be entitled to all rights afforded to the assigned LMM.

The rationale underlying this rule has since become antiquated because today's electronic-based trading results in fewer absences and there are a sufficient number of Market Maker firms assigned to each issue that are able to provide liquidity in the event of a LMM's temporary absence. Also, since nearly all option issues traded on NYSE Arca are traded on multiple exchanges, the historical risk to be managed by the current rule (namely, the ability of the Exchange to foster the provision of liquidity for investors) is no longer present.

Pursuant to the changes proposed to Rule 6.82(c)(5), an LMM must promptly notify a Trading Official if it is not accessible during the trading day. In the event an LMM is not accessible, it will not be eligible to receive any of the rights afforded to LMMs as contained in Rule 6.82(d). In those instances, the Exchange may designate an approved LMM[3] to act as a back-up LMM. In selecting an approved LMM to act in a back-up capacity, the Exchange will select an LMM that appears best able to perform the functions of the LMM. In designating a back-up LMM, the Exchange will use criteria consistent with LMM allocation procedures contained in Rule 6.82(e). The Exchange believes that this process is more beneficial to all market participants because the Exchange is in the best position to identify an appropriate back-up LMM.

It should be noted that the Exchange intends to designate a back-up LMM only in situations where the incumbent LMM is temporarily not accessible. In the event of a long-term absence, or permanent vacancy, the Exchange may either designate an Interim LMM pursuant to Rule 6.82(b)(4) or reallocate the issue to another LMM pursuant to Rule 6.82(f).

Upon the operative date of this rule change, all previously executed agreements between LMMs and back-up LMMs will be considered null and void. In addition, OTP Holders will no longer be required to designate a back-up LMM when applying to become an LMM. This rule change does not in any way revise or amend any other Exchange rules, including those rules pertaining to qualifications, obligations, and rights of LMMs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[4] of the Act, in general, and furthers the objectives of Section 6(b)(5),[5] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An ''approved LMM'' is an individual or entity that has been deemed qualified to be an LMM pursuant to Rule 6.82.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7]

A proposed rule change filed under Rule 19b–4(f)(6) of the Act[8] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)[9] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2009–92 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–92. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–92 and should be submitted on or before November 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–25829 Filed 10–27–09; 8:45 am]

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[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[8] 17 CFR 240.19b–4(f)(6).

[9] *Id.*

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60858; File No. SR–CBOE–2009–077]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Chicago Board Options Exchange Stock Exchange Fees Schedule Related to Stock Component of Stock-Option Cross Trade

October 21, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2009, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its CBOE Stock Exchange (''CBSX'') Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBSX proposes to make fee modifications in order to better attract business to the Exchange. Specifically, CBSX proposes to change to $0.0010 per share (from $0.0025 per share) its fee for the stock component of a stock-option cross trade, and to adjust the maximum rate to $15 per trade (from $50 per trade). These changes are to take effect as of October 19, 2009.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Act''),[5] in general, and furthers the objectives of Section 6(b)(4)[6] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2009–077 in the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–077. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2009–077 and should be submitted on or before November 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–25831 Filed 10–27–09; 8:45 am]

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[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60850; File No. SR–FINRA–2009–067]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rules 2060 (Use of Information Obtained in Fiduciary Capacity) and 5290 (Order Entry and Execution Practices) in the Consolidated FINRA Rulebook

October 21, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 6, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt NASD Rules 3120 (Use of Information Obtained in Fiduciary Capacity) and 3380 (Order Entry and Execution Practices) as FINRA rules in the consolidated FINRA rulebook without material change. The proposed rule change would renumber NASD Rule 3120 as FINRA Rule 2060 and NASD Rule 3380 as FINRA Rule 5290 in the consolidated FINRA rulebook.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] FINRA is proposing to adopt NASD Rules 3120 and 3380 in the Consolidated FINRA Rulebook without material change as FINRA Rules 2060 and 5290 respectively.

Proposed FINRA Rule 2060

FINRA is proposing to adopt NASD Rule 3120 as FINRA Rule 2060 in the Consolidated FINRA Rulebook. NASD Rule 3120 provides that a member who receives information as to the ownership of securities while acting in the capacity of paying agent, transfer agent, trustee or otherwise shall under no circumstances make use of the information for soliciting purchases, sales or exchanges except at the request and on behalf of the issuer. Rule 3120, formerly designated as Article III, Section 9 of the Rules of Fair Practice, was adopted as part of FINRA's original rulebook.[4] The text of the rule has not been amended since its inception.

FINRA believes that the rule serves an important purpose by prohibiting a member, while acting in the capacity of paying agent, transfer agent, trustee or otherwise, from using certain information it obtains about the ownership of securities to solicit purchases, sales or exchanges except at the request and on behalf of the issuer.[5]

Proposed FINRA Rule 5290

FINRA is proposing to adopt NASD Rule 3380 as FINRA Rule 5290 in the Consolidated FINRA Rulebook. NASD Rule 3380 prohibits members and associated persons from splitting any order into multiple smaller orders for execution or any execution into multiple smaller executions for transaction reporting for the primary purpose of maximizing a monetary or in-kind payment to the member or associated persons as a result of the execution of such orders or the transaction reporting of such executions.[6] For purposes of the rule, ''monetary or in-kind amount'' is defined to include, but not be limited to, any credits, commissions, gratuities, payments for or rebates of fees, or any other payments of value to the member or associated person. The SEC approved NASD Rule 3380 in February 2006 after notice and comment with no subsequent amendments.[7]

FINRA is proposing to replace ''may'' with ''shall'' in the rule text, but believes no substantive changes to this rule are appropriate or necessary.[8] FINRA continues to believe that NASD Rule 3380 is necessary and appropriate to deter the distortive practice of trade shredding.[9]

As noted above, FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA continues to believe that, in certain circumstances, a rule prohibiting members from using information about ownership of securities to solicit purchases, sales or exchanges except at the request and on behalf of the issuer serves to protect investors and the public interest. In addition, FINRA continues to believe that a rule regarding order entry and execution practices will continue to further the goal of preventing manipulative acts and practices by prohibiting the potentially distortive practice of trade shredding.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] *See* Certificate of Incorporation and By-Laws, Rules of Fair Practice and Code of Procedure for Handling Trade Practice Complaints of National Association of Securities Dealers, Inc. (August 8, 1939).

[5] With respect to the exception allowing use of information at the request and on behalf of the issuer, the descriptive analysis of the identical precursor provision drafted by the Investment Bankers Code Committee in 1934 explains that the exception is provided

[B]ecause if the issuer desires either to refund or propose an exchange to the security holder, he certainly has the right to demand from his transfer agent or trustee the list of security holders and the issuer thus being in a position to address them directly, the investment banker should be able to address them on his behalf.

See Code of Fair Competition for Investment Bankers with a Descriptive Analysis of its Fair Practice Provisions and a History of its Preparation (1934).

[6] This is commonly also referred to as ''trade shredding,'' which is the unlawful practice of splitting customer orders for securities into multiple smaller orders (*e.g.,* a 1,000 share order is split into ten 100 share orders) for the primary purpose of maximizing payments or rebates to the member.

[7] *See* Securities Exchange Act Release No. 53371 (February 24, 2006), 71 FR 11008 (March 3, 2006) (Order Approving File No. SR–NASD–2005–144).

[8] *See* Exhibit 5 (''No member or associated person [may] *shall* engage in conduct that has the intent or effect of splitting any order into multiple smaller orders for execution or any execution into multiple smaller executions for transaction reporting for the primary purpose of maximizing a monetary or in-kind amount to be received by the member or associated person as a result of the execution of such orders or the transaction reporting of such executions'').

[9] FINRA also notes that the rule is consistent with the rules of other securities self-regulatory organizations regarding trade shredding. *See, e.g.,* NYSE Rule 123G (Order Entry Practices) approved pursuant to Securities Exchange Act Release No. 52683 (October 26, 2005), 70 FR 66480 (November 2, 2005) (Order Approving File No. SR–NYSE–2005–62).

[10] 15 U.S.C. 78*o*–3(b)(6).

organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2009–067 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–067. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–067 and should be submitted on or before November 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–25872 Filed 10–27–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60860; File No. SR–FINRA–2009–065]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Define Asset-Backed Securities, Mortgage-Backed Securities, and Other Similar Securities as TRACE-Eligible Securities and Require the Reporting of Transactions in Such Securities to TRACE

October 21, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 1, 2009, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend the FINRA Rule 6700 Series (except for Rule 6740) and FINRA Rule 7730 to designate asset-backed securities, mortgage-backed securities and other similar securities (collectively defined hereinafter as ''Asset-Backed Securities'') as Trade Reporting and Compliance Engine (''TRACE'') TRACE-Eligible Securities, and establish reporting, fee and other requirements relating to such securities as follows:

(1) In Rule 6710, to amend the defined term: (A) ''TRACE-Eligible Security'' to include Asset-Backed Securities; and make certain technical changes in Rule 6710(a); (B) ''Reportable TRACE Transaction'' to include specific requirements regarding certain Asset-Backed Securities in Rule 6710(c); (C) ''Agency Debt Security'' to incorporate proposed defined terms in Rule 6710(l); and (D) ''TRACE System Hours'' to transfer the defined term from Rule 6730(a) to Rule 6710(bb);

(2) In Rule 6710, to add the defined terms, ''Sponsor,'' ''Issuing Entity,'' ''TBA,'' ''Agency Pass-Through Mortgage-Backed Security,'' ''Factor,'' ''Specified Pool Transaction,'' ''Stipulation Transaction,'' ''Dollar Roll,'' and ''Remaining Principal Balance,'' as, respectively, new paragraphs (s) through (aa);

(3) In Rule 6730, to provide for reporting of Asset-Backed Securities transactions;

(4) In Rule 6750, to provide that information on a transaction in a TRACE-Eligible Security that is an Asset-Backed Security will not be disseminated;

(5) In Rule 6760, to require a member that is a Sponsor or an Issuing Entity of an Asset-Backed Security to provide notice as required under the Rule, and to modify the notification requirements to accept a mortgage pool number in certain circumstances;

(6) In Rule 7730, to establish transaction reporting fees for Asset-Backed Securities that are TRACE-Eligible Securities at the same rates in effect for corporate bonds; for certain Asset-Backed Securities, to identify size (volume) for determining a trade reporting fee, and to provide that for purposes of Rule 7730(b), a transaction in an Agency Pass-Through Mortgage-Backed Security is not a List or Fixed Offering Price Transaction or a Takedown Transaction; and

(7) In the Rule 6700 Series, except for Rule 6740, and Rule 7730 to incorporate certain technical, administrative and clarifying changes.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of, and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Introduction

(A) Background

FINRA proposes to expand TRACE to include Asset-Backed Securities, as defined in Rule 6710(m), as TRACE-Eligible Securities, requiring members to report transactions in such securities to TRACE. For purposes of this proposed rule change, the term ''Asset-Backed Security'' is broadly defined, and the reporting of such securities to TRACE will permit FINRA to obtain additional transaction information and observe patterns of trading, facilitating the oversight and regulation of the Asset-Backed Securities market. FINRA will study the reported data to determine the volume and trading in various types of Asset-Backed Securities.

Generally, FINRA's policy favors transparency in the debt securities markets, and for most TRACE-Eligible Securities, real-time dissemination of transaction information is provided for under Rule 6750(a). Although at this time FINRA does not propose that transaction information on Asset-Backed Securities be disseminated, FINRA believes that the transparency in corporate bonds provided by TRACE today has contributed to better pricing, more precise valuations and reduced investor costs. After FINRA has had an opportunity to review data over a period of time, FINRA may determine that dissemination of some transaction information for Asset-Backed Securities is warranted.[3]

(B) Summary of Proposed Amendments

To incorporate Asset-Backed Securities in TRACE, FINRA proposes significant amendments to Rule 6710, Rule 6730 and Rule 6750 and lesser amendments to Rule 6720, Rule 6760 and Rule 7730. In Rule 6710, FINRA proposes to revise the defined terms, ''TRACE-Eligible Security'' and ''Reportable TRACE Transaction,''[4] and to add nine defined terms, most of which relate to the trading of Agency Pass-Through Mortgage-Backed Securities[5] and other types of Asset-Backed Securities that are collateralized by mortgages or other assets that are self-amortizing. In Rule 6730, FINRA proposes more liberal trade reporting requirements for transactions in Asset-Backed Securities than those in effect for corporate bonds, modifications to the reporting requirements relating to particular structural aspects or other features of certain Asset-Backed Securities, and, in Rule 6750(b), not to disseminate transaction information on Asset-Backed Securities. The proposed amendments to Rule 6760 characterize a member that is a Sponsor or an Issuing Entity[6] of an Asset-Backed Security as a managing underwriter, requiring such persons to provide notice as required under the rule. FINRA proposes amendments to Rule 7730 to apply the fees currently in effect under the rule at the same rates to transactions in Asset-Backed Securities; to provide that a transaction in an Agency Pass-Through Mortgage-Backed Security will not be treated as a List or Fixed Offering Price Transaction or a Takedown Transaction for purposes of trade reporting fees; and to define size (volume) for purposes of the reporting fees payable for transactions in certain Asset-Backed Securities. Finally, several minor, technical or clarifying amendments are proposed to the Rule 6700 Series (except for Rule 6740) and Rule 7730.

Discussion

(A) ''TRACE-Eligible Security''; Other Defined Terms

TRACE-Eligible Security and Asset-Backed Security. Under Rule 6710(a), a TRACE-Eligible Security is a debt security that is U.S. dollar denominated and issued by a U.S. or foreign private issuer, and if a ''restricted security'' as defined in Securities Act Rule 144(a)(3), sold pursuant to Rule 144A; or is a U.S. dollar denominated security that is issued or guaranteed by an Agency or a Government-Sponsored Enterprise (''GSE'').[7] Securities excluded from ''TRACE-Eligible Security'' include U.S. Treasury Securities, foreign sovereign securities and other securities not issued by a private issuer, Money Market Instruments and Asset-Backed Securities.[8]

In Rule 6710(m), ''Asset-Backed Security'' is defined broadly to include a security that is defined as such under Securities Act Regulation AB,[9] a

[3] FINRA used this approach previously when it implemented dissemination in phases for various types of corporate bonds. Similarly, any proposal to adopt dissemination protocols for Asset-Backed Securities will be subject to rulemaking under Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1).

[4] FINRA also proposes technical or clarifying amendments to ''Agency Debt Security,'' ''Asset-Backed Security'' and ''TRACE System Hours'' as defined, respectively, in Rule 6710(l), Rule 6710(m) and Rule 6710(bb).

[5] ''Agency Pass-Through Mortgage-Backed Security'' is defined in proposed Rule 6710(v) and discussed, *infra.*

[6] ''Sponsor'' and ''Issuing Entity'' are defined in proposed Rule 6710(s) and proposed Rule 6710(t) and discussed, *infra.*

[7] ''Agency'' is defined in Rule 6710(k) and ''Government-Sponsored Enterprise'' (''GSE'') is defined in Rule 6710(n).

[8] ''U.S. Treasury Security'' is defined in Rule 6710(p); ''Money Market Instrument'' is defined in Rule 6710(o); and ''Asset-Backed Security'' is defined in Rule 6710(m).

[9] Securities Act Regulation AB, Section 1101(c) defines ''asset-backed security'' as:

(1)'Asset-backed security' means a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distributions of proceeds to the security holders; provided that in the case of financial assets that are leases, those assets may convert to cash partially by the cash proceeds from the disposition of the physical property underlying such leases.

(2) The following additional conditions apply in order to be considered an asset-backed security:

(i) Neither the depositor nor the issuing entity is an investment company under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) nor will become an investment company as a result of the asset-backed securities transaction.

(ii) The activities of the issuing entity for the asset-backed securities are limited to passively owing or holding the pool of assets, issuing the asset-backed securities supported or serviced by those assets, and other activities reasonably incidental thereto.

(iii) No non-performing assets are part of the asset pool as of the measurement date.

(iv) Delinquent assets do not constitute 50% or more, as measured by dollar volume, of the asset pool as of the measurement date.

(v) With respect to securities that are backed by leases, the portion of the securitized pool balance attributable to the residual value of the physical property underlying the leases, as determined in accordance with the transaction agreements for the securities, does not constitute:

(A) For motor vehicle leases, 65% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date.

(B) For all other leases, 50% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date.

(3) Notwithstanding the requirement in paragraph (c)(1) of this section that the asset pool be a discrete pool of assets, the following are considered to be a discrete pool of assets for purposes of being considered an asset-backed security:

(i) *Master Trusts.* The offering related to the securities contemplates adding additional assets to the pool that backs such securities in connection with future insurances of asset-backed securities backed by such pool. The offering related to the securities also may contemplate additions to the asset pool, to the extent consistent with paragraphs (c)(3)(ii) and (c)(3)(iii) of this section, in connection with maintaining minimum pool balances in accordance with the transaction agreements for master trusts with revolving periods or receivables or other financial assets that arise under revolving accounts.

(ii) *Prefunding Periods.* The offering related to the securities contemplates a prefunding account where a portion of the proceeds of that offering is to be used for the future acquisition of additional pool assets, if the duration of the prefunding period does not extend for more than one year from the date of insurance of the securities and the portion of the proceeds for such prefunding account does not involve in excess of:

Continued

mortgage-backed security, a collateralized mortgage obligation, a synthetic asset-backed security, or any instrument involving or based on the securitization of mortgages or other credits or assets, including but not limited to a collateralized debt obligation, a collateralized bond obligation, a collateralized debt obligation of Asset-Backed Securities or a collateralized debt obligation of collateralized debt obligations. These instruments include any instrument involving or based on the securitization of mortgages or other credits or assets, such as asset-backed securities backed by a pool credit card receivables, automobile loans, student loans, or Small Business Administration loans. The term includes Asset-Backed Securities that are issued or guaranteed by an Agency or a GSE.[10]

FINRA proposes to amend the defined term ''TRACE-Eligible Security'' in Rule 6710(a) to include all Asset-Backed Securities as broadly defined in Rule 6710(m) as TRACE-Eligible Securities. The specific exclusion of Asset-Backed Securities in the definition of ''TRACE-Eligible Security'' will be deleted. The proposed amendment will include in TRACE a significant, high dollar volume and increasing number of debt securities.

In addition, in Rule 6710(m) FINRA proposes minor amendments to the term, ''Asset-Backed Security,'' which will clarify but will not change the scope or meaning of the definition. As amended, the definition will provide:

''Asset-Backed Security'' means a security collateralized by any type of financial asset, such as loans, leases, mortgages, or secured or unsecured receivables, and includes but is not limited to an asset-backed security as used in Securities Act Regulation AB, Section 1101(c), a mortgage-backed security, a collateralized mortgage obligation, a synthetic asset-backed security, a collateralized debt obligation, a collateralized bond obligation, a collateralized debt obligation of Asset-Backed Securities or a collateralized debt obligation of collateralized debt obligations.

Reportable TRACE Transaction. FINRA recently amended the Rule 6700 Series to require members to report primary market transactions, which harmonized the reporting requirements regarding such transactions with the requirements of The Municipal Securities Rulemaking Board (''MSRB'').[11] Neither FINRA, with respect to TRACE-Eligible Securities, nor the MSRB, with respect to municipal securities, require that the initial sale from an issuer to an underwriter(s) or an initial purchaser(s) be reported as a primary market transaction.

FINRA proposes to amend the term ''Reportable TRACE Transaction'' in Rule 6710(c) to provide that, for Agency Pass-Through Mortgage-Backed Securities, all transactions, including the initial sale of an Agency Pass-Through Mortgage-Backed Security from an Issuing Entity or a Sponsor to an underwriter or an initial purchaser, are Reportable TRACE Transactions. FINRA proposes that such initial sales in an Agency Pass-Through Mortgage-Backed Security be reported due to the particular origination process, including the manner in which such securities are sold initially. In most cases, the origination of a TRACE-Eligible Security involves an offering where an issuer sells securities to one or more underwriters or initial purchasers that then resell such securities. However, due in part to the TBA process, and their status as exempt securities, Agency Pass-Through Mortgage-Backed Securities generally are not sold in traditional private offerings (or a traditional public offering). Consequently, requiring the reporting of the initial transaction may be the only opportunity to elicit necessary information for a regulatory audit trail of Asset-Backed Securities. In addition, the proposed amendments clarify that similar primary market sale transactions from the issuer to an underwriter or initial purchaser in other TRACE-Eligible Securities will continue not to be Reportable TRACE Transactions.

FINRA also proposes to streamline the definition, ''Agency Debt Security,'' in Rule 6710(l) by using proposed defined terms and to transfer the defined term ''TRACE System Hours'' from Rule 6730(a) to Rule 6710(bb), with a minor amendment to clarify that the TRACE system operates only on business days.

New Defined Terms

FINRA proposes to add to Rule 6710 the following defined terms: ''Sponsor'' as proposed Rule 6710(s); ''Issuing Entity'' as proposed Rule 6710(t); ''TBA'' as proposed Rule 6710(u); ''Agency Pass-Through Mortgage-Backed Security'' as proposed Rule 6710(v); ''Factor'' as proposed Rule 6710(w); ''Specified Pool Transaction'' as proposed Rule 6710(x), ''Stipulation Transaction'' as proposed Rule 6710(y); ''Dollar Roll'' as proposed Rule 6710(z); and ''Remaining Principal Balance'' as proposed Rule 6710(aa).

Sponsor and Issuing Entity. In Asset-Backed Securities, the Sponsor of an Asset-Backed Security is the person (*i.e.,* usually a non-natural ''person'' such as a corporation) that decides to issue a security and determines its structure, pool and features. FINRA proposed to incorporate the definition of ''Sponsor'' adopted by the Commission in Securities Act Regulation AB, Item 1101(l) as proposed Rule 6710(s). Securities Act Regulation AB, Item 1101(l) defines ''Sponsor'' as ''the person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity.'' [12]

The Sponsor of an Asset-Backed Bond is generally not the issuer. In Asset-Backed Securities, the issuer is often a trust, or special purpose vehicle (''SPV'') or special purpose entity (''SPE'') that is established solely to issue the Asset-Backed Securities and hold the pool of assets that back the asset-backed security, and, in SEC Regulation AB, is referred to as the ''issuing entity.'' For purposes of TRACE, FINRA proposes to define ''Issuing Entity'' as the term is defined in Securities Act Regulation AB, Item 1101(f) in proposed Rule 6710(t). Securities Act Regulation AB, Item 1101(f) defines an issuing entity as ''the trust or other entity created at the direction of the sponsor or depositor that owns or holds the pool assets and in whose name the asset-backed securities supported or serviced by the pool assets are issued.'' [13] Among other things, under the TRACE provisions, members that are Sponsors or Issuing

(A) For master trusts, 50% of the aggregate principal balance of the total asset pool whose cash flows support the securities; and

(B) For other offerings, 50% of the proceeds of the offering.

(iii) *Revolving Periods.* The offering related to the securities contemplates a revolving period where cash flows from the pool assets may be used to acquire additional pool assets, provided, that, for securities backed by receivables or other financial assets that do not arise under revolving accounts, the revolving period does not extend for more than three years from the date of issuance of the securities and the additional pool assets are of the same general character as the original pool assets.

[10] The defined term ''Agency Debt Security'' in Rule 6710(l) *does not* include an Asset-Backed Security, even if such security is issued or guaranteed by an Agency or a GSE.

[11] Securities Exchange Act Release No. 60726 (September 28, 2009), 74 FR 50991 (October 2, 2009) (Order Approving SR–FINRA–2009–010) (hereinafter ''SEC Order Approving TRACE Expansion—Agency Debt Securities''). The MSRB requires the reporting of primary market transactions in municipal securities under MSRB Rule G–14.

[12] Securities Act Regulation AB, Item 1101(l), 17 CFR 229.1101(l).

[13] Securities Act Regulation AB, Item 1101(f), 17 CFR 229.1101(f).

Entities are required to provide notice to FINRA Operations under Rule 6760.

TBA. FINRA proposes to add the defined term ''TBA'' as proposed Rule 6710(u). ''TBA'' stands for ''to be announced'' and refers to a transaction in an Agency Pass-Through Mortgage-Backed Security, as defined in proposed Rule 6710(v) and discussed in the following paragraph, where the parties agree to specific terms (*i.e.,* face amount of the security, coupon, maturity, the Agency or GSE under which the mortgage pools will be issued or guaranteed, price and clearance and settlement in conformity with the uniform practices established as ''good delivery'' on a standard pre-announced settlement date for such instruments), but do not identify the specific pool(s) of mortgages that will be delivered on settlement date.[14]

Agency Pass-Through Mortgage-Backed Security. Proposed Rule 6710(v) defines Agency Pass-Through Mortgage-Backed Security to mean:

> [A] mortgage-backed security issued by an Agency or a Government-Sponsored Enterprise, for which the timely payment of principal and interest is guaranteed by an Agency or a Government-Sponsored Enterprise, representing ownership interests in a pool or pools of residential mortgage loans with the security structured to ''pass through'' the principal and interest payments made by the mortgagees to the owners of the pool(s) on a pro rata basis.

Several of the defined terms and other amendments to the Rule 6700 Series and Rule 7730 in this proposed rule change address issues that are specific to transactions in Agency Pass-Through Mortgage-Backed Securities.

Remaining Principal Balance and Factor. The related terms, ''Remaining Principal Balance'' and ''Factor'' are defined, respectively, in proposed Rule 6710(aa) and proposed Rule 6710(w). Factors and Remaining Principal Balances are relevant in the pricing and valuation of mortgage-backed securities and certain other types of Asset-Backed Securities that are backed by mortgage pools or other pools containing assets that are self-amortizing. Proposed Rule 6710(aa) defines ''Remaining Principal Balance'' to mean:

> [F]or an Asset-Backed Security backed by a pool of mortgages or other assets that are self-amortizing, the total unpaid principal balance of all such mortgages, or the equivalent remaining value of such self-amortizing assets held in the asset pool, at a specific time, such as the Time of Execution.

A ''Factor'' is used by dealers and other market professionals to calculate the Remaining Principal Balance of an Asset-Backed Security that is backed by a pool of mortgages or other self-amortizing assets. Specifically, proposed Rule 6710(w) defines ''Factor'' as:

> [T]he decimal value representing the proportion of the outstanding principal value of a security to its original principal value.

For example, at issuance, the Factor for every mortgage-backed security and certain other types of Asset-Backed Securities for which a Factor is used is 1.0. Over time, the Factor for the specific security changes, reflecting the Remaining Principal Balance of the pool of assets for such security.[15] In a transaction in an Asset-Backed Security that is backed by mortgages or other assets that are self-amortizing, under proposed amendments to Rule 6730(d)(2), discussed *infra,* a member will be required to report a Factor, which is used to price the security. However, not all types of Asset-Backed Securities are priced using a Factor.

Specified Pool Transaction; Stipulation Transaction; Dollar Roll. In proposed Rule 6710(x), Rule 6710(y), and Rule 6710(z), respectively, FINRA defines three special types of transactions that occur solely in Agency Pass-Through Mortgage-Backed Securities. The term ''Specified Pool Transaction'' is defined in proposed Rule 6710(x). A ''Specified Pool Transaction'' is a transaction in an Agency Pass-Through Mortgage-Backed Security that requires the seller to deliver at settlement ''one or more pools of mortgages that, at the Time of Execution, are identified by their unique pool identification numbers and original principal value.'' The conditions limiting the seller's delivery options affect pricing, and FINRA proposes that such transactions be reported with an indicator, as discussed *infra.*

In proposed Rule 6710(y), the term ''Stipulation Transaction'' is defined to mean a transaction:

> [I]n an Agency Pass-Through Mortgage-Backed Security as defined in paragraph (v) where, at the Time of Execution, the parties agree that the seller will deliver to the buyer an Agency Pass-Through Mortgage-Backed Security of a specified face amount and coupon from a specified Agency or Government-Sponsored Enterprise program that represents a pool (or pools) of mortgages, at a specified price, and the parties stipulate that the pool or pools to be delivered meet certain conditions that preclude settlement of the transaction in conformity with the uniform practices established as ''good delivery'' for an Agency Pass-Through Mortgage-Backed Security effected TBA.

A transaction in an Agency Pass-Through Mortgage-Backed Security that is a Stipulation Transaction differs from a ''Specified Pool Transaction'' because good delivery, although conditioned by the special stipulations, is not limited to specific pools that the parties have identified by pool number. Again, the special conditions that limit the seller's flexibility as to delivery affect pricing, and FINRA proposes that such trades be reported with an indicator.

The term ''Dollar Roll,'' as defined in proposed Rule 6710(z), describes simultaneous transactions that are executed pursuant to an agreement between a buyer and seller of an Agency Pass-Through Mortgage-Backed Security. At the time of the transactions, the initial buyer of the Agency Pass-Through Mortgage-Backed Security pays a specific purchase price, agrees to a settlement date, and also agrees to reverse the purchase transaction at a later occurring settlement date, at a different price, and deliver to the initial seller of such securities the same or substantially similar securities. FINRA also proposes amendments to Rule 6730 requiring a member to report any of such transactions with an indicator, as discussed, *infra.*[16]

(B) Reporting

Rule 6730(a) requires members to report transactions to TRACE within 15 minutes of the Time of Execution, with certain exceptions for trades executed during non-TRACE System Hours.[17] The 15 minute reporting requirement applies to all TRACE-Eligible Securities transactions, except primary market

[14] Specifically, proposed Rule 6710(u) provides:

''TBA'' means ''to be announced'' and refers to a transaction in an Agency Pass-Through Mortgage-Backed Security as defined in paragraph (v) where the parties agree that the seller will deliver to the buyer an Agency Pass-Through Mortgage-Backed Security of a specified face amount and coupon from a specified Agency or Government Sponsored Enterprise program representing a pool (or pools) of mortgages (that are not specified by unique pool number), at a specified price, and the parties will clear and settle the transaction in conformity with the uniform practices established as ''good delivery'' for such transactions and will not impose any special conditions or stipulations.

[15] For example, a mortgage-backed security with an original face value of $10 million that has a Factor of .5 on April 15, 2009 has a Remaining Principal Balance of $5 million as of April 15, 2009 (assuming all mortgage payments and prepayments have been included in the calculation of the Factor).

[16] Specifically, proposed Rule 6710(z) provides:

''Dollar Roll'' means a simultaneous sale and purchase of an Agency Pass-Through Mortgage-Backed Security as defined in paragraph (v) for different settlement dates, where the initial seller agrees to take delivery, upon settlement of the re-purchase transaction, of the same or substantially similar securities.

[17] Rules 6730(a)(1) through (4) provides exceptions to the standard 15 minute reporting requirement if a member executes a transaction after or before TRACE System Hours or less than 15 minutes before the TRACE system closes.

transactions that are List or Fixed Offering Price Transactions or Takedown Transactions.[18] Rules 6730(a) through (d) list the information that must be reported, including certain trade reporting indicators and modifiers that are required for some transaction reports.

End-of-Day Reporting

FINRA proposes to liberalize the reporting period for Asset-Backed Securities transactions. Under proposed Rule 6730(a)(6), members executing Asset-Backed Securities transactions will have until the end of the business day—until the TRACE system closes—to report such transactions. If a transaction in an Asset-Backed Security is executed after 5 p.m. Eastern Time, a broker-dealer will have until the end of the next business day to report the transaction under proposed Rules 6730(a)(6)(B)(i). In addition, if a broker-dealer executes an Asset-Backed Securities transaction at any time outside of the TRACE System Hours, the broker-dealer will have until the end of the TRACE System Hours on the next business day to report such transactions under Rules 6730(a)(6)(B)(ii) and (iii).[19]

Generally, transactions must be reported within 15 minutes of the Time of Execution to facilitate better pricing and to enhance transparency.[20] The more liberal end-of-day reporting requirements proposed for Asset-Backed Securities transactions are appropriate because, although pricing and other transaction information will be reviewed for surveillance, Asset-Backed Securities transactions initially will not be disseminated publicly to market participants. Also, the end-of-day reporting provisions will provide broker-dealers operational flexibility and will ease compliance burdens, particularly during the implementation of the proposed changes. FINRA will work with broker-dealers and third party vendors to ensure effective and cost efficient implementation.

Additional Reporting Requirements for Asset-Backed Securities

Security Identification. Rule 6730(c)(1) requires a member to identify a TRACE-Eligible Security by a CUSIP number or a FINRA symbol in each transaction report. However, certain Asset-Backed Securities may be traded without an assigned CUSIP. FINRA proposes to amend Rule 6730(c)(1) to permit a member, when a CUSIP number is not available at the Time of Execution (or will not be assigned), to provide a similar numeric identifier, such as a mortgage pool number or a FINRA symbol. (FINRA symbols are assigned by FINRA Operations upon request.)

Size (Volume). Currently, members report the size (or volume) of a transaction for TRACE-Eligible Securities by reporting the number of bonds, as provided in Rule 6730(c)(2) and Rule 6730(d)(2). The TRACE System converts the information to a dollar value for purposes of the dissemination of transaction information. The stated reporting requirement includes the assumption that one bond represents a specific par amount, typically $1,000 par (or principal) value.[21]

For certain Asset-Backed Securities, such as Agency Pass-Through Mortgage-Backed Securities, the principal value—the value of the collateral of the mortgages or other assets backing the security—declines over time (*e.g.,* the mortgagees in the pool of mortgages pay down their mortgages).[22] In such cases, the size (volume) of such Asset-Backed Securities is the original face value or principal amount of the security at issuance, stated in dollars, and thereafter, the Remaining Principal Balance. The Remaining Principal Balance is calculated by multiplying the original face value by a Factor. FINRA proposes to amend Rule 6730(d)(2), which provides guidance on how to report size (volume) under Rule 6730(c)(2). In a transaction in an Asset-Backed Security for which par value is not used to measure the size (volume) of a transaction, the proposed amendments to Rule 6730(d)(2) will require a member to report the original face value of such security and, in a second field, the Factor the member used at the Time of Execution. Generally, FINRA expects that the Factor a member uses to execute a transaction will be the Factor that was most recently published by the Sponsor or Issuing Entity of the security or other source providing such information periodically to market participants.

Price. Rule 6730(c)(3) and Rule 6730(d)(1) require members to report price. If a price field is not available, members are required to report the contract amount and the accrued interest. Accrued interest is not a component of the total sale price of Asset-Backed Securities. To harmonize the reporting provision in connection with the reporting of Asset-Backed Securities, proposed amended Rule 6730(d)(1) will require members to report accrued interest only if applicable.

Settlement Modifiers. FINRA proposes several amendments to Rule 6730(d)(4) providing for modifiers and indicators that will distinguish certain trades executed at special prices or subject to other conditions affecting price. FINRA proposes to amend Rule 6730(d)(4)(B) to clarify that many securities are conventionally settled on T + 3, by stating this specifically, instead of using the phrase ''regular way.'' The change is necessary because the T + 3 convention for settlement of many securities does not apply to certain Asset-Backed Securities to be included in TRACE.[23] In addition, FINRA proposes additional amendments to Rule 6730(d)(4)(B) to reflect settlement conventions regarding Agency Pass-Through Mortgage-Backed Securities and the settlement of other Asset-Backed Securities. Transactions in Agency Pass-Through Mortgage-Backed Securities, by industry convention, are assigned one of four *monthly* settlement dates according to the type of Agency Pass-Through Mortgage-Backed Security to be settled.[24] The proposed amendments to Rule 6730(d)(4)(B) will not require a member to use a settlement modifier for a transaction in an Agency Pass-Through Mortgage-Backed Security that the parties will settle in conformity with the uniform practices established as ''good delivery'' for such transactions on the next occurring monthly date announced for settlement of such

[18] *See* SEC Order Approving TRACE Expansion—Agency Debt Securities.

[19] In Rule 6730(a)(6)(B)(iii), the proposed reporting requirements for transactions in Asset-Backed Securities that a broker-dealer executes on a Saturday, a Sunday, or a Federal or religious holiday when the TRACE system is closed include specific information requirements and have parallels to the reporting requirements for transactions reported under Rule 6730(a)(4).

[20] The extended reporting period that was recently approved by the SEC for List or Fixed Offering Price Transactions and Takedown Transactions permits T + 1 reporting only of those transactions that occur at the fixed price stated in the offering materials and are executed on the first day of an offering. *See* SEC Order Approving TRACE Expansion—Agency Debt Securities.

[21] For example, a member reports a trade of 10 bonds and the total par value of $10,000 is displayed.

[22] Occasionally, the value of the collateral increases—for example, in ''interest only'' mortgages, the loan balances may increase.

[23] In some cases, certain types of Asset-Backed Securities transactions routinely may settle a number of months after trade date.

[24] Industry professionals involved in transactions in Agency Pass-Through Mortgage-Backed Securities effected TBA developed a convention for ''regular way'' settlement of these instruments. According to the type of security, such securities are settled monthly on specified settlement dates, which are announced for each month several months in advance. In total, four monthly Settlement Dates (A through D), per month, were established and published, to establish settlement conventions for the various types of securities being originated and traded.

securities. However, if the parties will settle other than in conformity with the uniform practices established as ''good delivery'' for such transactions, under the amendments members will be required to report using the settlement modifier (''.sNN''), indicating the number of days until settlement (*e.g.,* ''.s55''). In addition, the proposed amendments to Rule 6730(d)(4)(B) will require members to report transactions in all other types of Asset-Backed Securities using the settlement modifier (''.sNN'') and providing the specified number of days to settlement (*e.g.,* ''.s55'').

Indicators for Specified Pool Transactions; Stipulation Transactions; Dollar Rolls. As discussed above, transactions in Agency Pass-Through Mortgage-Backed Securities that are Specified Pool Transactions or Stipulation Transactions contain additional terms and conditions, which affect price. Price also is impacted in a Dollar Roll, which is a third type of transaction also discussed above that occurs in Agency Pass-Through Mortgage-Backed Securities. FINRA proposes indicators that a member must use when reporting a Specified Pool Transaction, a Stipulation Transaction, a Dollar Roll, and a transaction that is both a Dollar Roll and a Stipulation Transaction in, respectively, proposed Rule 6730(d)(4)(E)(i), (ii), (iii) and (iv).

Agency Pass-Through Mortgage-Backed Security Initial Sale. FINRA recently amended the Rule 6700 Series to require that primary market transactions be reported to TRACE. The reporting requirements for primary market transactions that are List or Fixed Offering Price transactions and Takedown Transactions are set forth in Rule 6730(a)(5), and extend the reporting period to the close of the TRACE system on T + 1. FINRA proposes that these reporting requirements will not apply to a transaction in an Agency Pass-Through Mortgage-Backed Security, which are not sold in a traditional underwriting or placement as envisioned and incorporated in the definitions of List or Fixed Offering Price Transaction and Takedown Transaction.

(C) Dissemination

Generally, FINRA's policy favors transparency in the debt securities markets, and for most TRACE-Eligible Securities, real-time dissemination of transaction information is provided for under Rule 6750(a). Dissemination of the information occurs immediately upon receipt of the transaction report. The exceptions to the policy favoring dissemination in Rule 6750(b) are currently limited to transactions effected pursuant to Securities Act Rule 144A, transfers of certain proprietary positions effected in connection with broker-dealer mergers or other broker-dealer consolidations, and List or Fixed Offering Price Transactions and Takedown Transactions.[25]

However, at this time, FINRA proposes not to disseminate information on transactions in Asset-Backed Securities in proposed Rule 6750(b)(4). The reporting of Asset-Backed Securities transactions will permit FINRA to obtain additional information, observe patterns of trading and otherwise engage in more in-depth surveillance of the Asset-Backed Securities market. FINRA will study the collected data to determine the volume and trading in various types of Asset-Backed Securities. FINRA may determine that dissemination of transaction information is warranted with respect to Asset-Backed Securities after it has had an opportunity to review data over a period of time. FINRA used this approach previously when it implemented dissemination in phases for various types of corporate bonds.

(D) Other Amendments to Rule 6700 Series

Rule 6760. Currently, Rule 6760 requires members that are managing underwriters to notify FINRA that a new TRACE-Eligible Security is about to be offered and sold in a primary offering. FINRA must have this information in the TRACE system to facilitate timely transaction reporting by all members that have effected transactions in a newly issued TRACE-Eligible Security. For TRACE-Eligible Securities that are Asset-Backed Securities, for the purposes of Rule 6760, FINRA proposes to amend Rule 6760(a) to characterize a Sponsor and an Issuing Entity of an Asset-Backed Security, if members, as managing underwriters, and require them, like underwriters or initial purchasers of Asset-Backed Securities, to provide FINRA Operations notice of a new Asset-Backed Security and information that identifies the new security by CUSIP (or if a CUSIP number is not available, a similar numeric identifier (*e.g.,* a mortgage pool number) or a FINRA symbol) and describes the security.

For an Asset-Backed Security, FINRA proposes to amend the notice requirements in Rule 6760(b) to require the names of the Issuing Entity and the Sponsor, in addition to the CUSIP (or an alternative identifier) and other currently required information (*i.e.,* coupon rate; maturity; the time the new issue is priced, and, if different, the time that the first transaction in the distribution or offering is executed; a brief description of the security type; and if the security will be traded subject to Securities Act Rule 144A).

FINRA also proposes minor technical, stylistic, or conforming changes to the Rule 6700 Series, including renumbering certain provisions, incorporating the term TRACE System Hours in certain provisions, and restating certain requirements regarding settlement and settlement modifiers.

(E) Fees

FINRA proposes that the current trade reporting fees set forth in Rule 7730 also apply to the reporting of transactions in Asset-Backed Securities. Because Asset-Backed Securities transaction information will not be disseminated, there will not be any market data available, and thus no market data fees are proposed. For transactions in Asset-Backed Securities, such as Agency Pass-Through Mortgage-Backed Securities, for which par value is not used to determine the size (or volume) of a transaction, FINRA clarifies how transaction fees will be assessed. For purposes of trade reporting fees, proposed Rule 7730(b)(1)(B) provides that transaction size for such securities will be the lesser of the original face amount or Remaining Principal Balance.

In proposed Rule 7730(b)(1)(D), FINRA proposes that transactions in an Agency Pass-Through Mortgage-Backed Security not be considered List or Fixed Offering Price Transactions or Takedown Transactions for purposes of the reporting fees in Rule 7730(b), which will eliminate any possible application to Agency Pass-Through Mortgage-Backed Security transactions of the recently adopted provision in Rule 7730(b)(1)(C). Rule 7730(b)(1)(C) provides that a member that reports a List or Fixed Offering Price Transaction or a Takedown Transaction shall not be charged the standard trade reporting fee assessed under Rule 7730(b)(1).

[25] TRACE-Eligible Securities transactions that are not disseminated are set forth in Rule 6750(b). Rule 6750(b)(1) applies as to transactions in TRACE-Eligible Securities that are affected as Securities Act Rule 144A transactions. Under Rule 6750(b)(2), FINRA does not disseminate information on a transfer of proprietary securities positions between a member and another member or non-member broker-dealer where the transfer: (A) Is effected in connection with a merger of one broker-dealer with the other broker-dealer or a direct or indirect acquisition of one broker-dealer by the other broker-dealer or the other broker-dealer's parent company, and (B) is not in furtherance of a trading or investment strategy. Under recently approved Rule 6750(b)(3), FINRA will not disseminate List or Fixed Offering Price Transactions and Takedown Transactions.

Finally, FINRA proposes minor technical, stylistic, or conforming changes to Rule 7730, including changes to conform the fee chart to the changes in the rule text.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 270 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[26] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and Section 15A(b)(5) of the Act,[27] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls in that: (i) the proposed rule change will enhance FINRA's surveillance of the debt market in connection with Asset-Backed Securities transactions generally; and (ii) the proposed fee proposal provides for reporting fees that mirror the fees currently in effect for corporate bonds, and are reasonable and equitably allocated among members.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2009–065 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–065. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–FINRA–2009–065 and should be submitted on or before November 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Elizabeth M. Murphy,

Secretary.

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[26] 15 U.S.C. 78*o*–3(b)(6).

[27] 15 U.S.C. 78*o*–3(b)(5).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60851; File No. SR–FINRA–2009–068]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to FINRA's Rules Governing Clearly Erroneous Executions

October 21, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 19, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt NASD Rule 11890, IM–11890–1, and IM–11890–2 into the Consolidated FINRA Rulebook as part of a new FINRA Rule 11890 Series governing clearly erroneous transactions and to amend these rules as part of a market-wide effort designed to provide transparency and finality with respect to clearly erroneous executions.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] FINRA is proposing that NASD Rule 11890, IM–11890–1, and IM–11890–2 be moved into the Consolidated FINRA Rulebook as part of a new FINRA Rule 11890 Series governing clearly erroneous transactions.[4] FINRA is also proposing to amend these rules as part of a market-wide effort designed to provide transparency and finality with respect to clearly erroneous executions.[5] This effort seeks to achieve consistent results for participants across U.S. equities exchanges while maintaining a fair and orderly market, protecting investors, and protecting the public interest. Unlike the rules of the U.S. equities exchanges, FINRA's rules also address clearly erroneous executions in OTC Equity Securities.[6] NASD Rule 11890 currently provides that, in the event of a disruption or malfunction related to the use or operation of any quotation, communication, or trade reporting system owned or operated by FINRA, or under extraordinary market conditions, designated officers of FINRA can review an over-the-counter (''OTC'') transaction arising out of or reported through any such quotation, communication, or trade reporting system, and may declare the transaction null and void or modify the terms if any such officer determines that the transaction is clearly erroneous or that such action is necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest. IM–11890–1 and IM–11890–2 address rulings made by FINRA and the UPC Committee pursuant to NASD Rule 11890 and the review of those rulings.

NASD Rule 11890 provides important safeguards against market disruptions caused by trader errors, system malfunctions, or other extraordinary events that result in erroneous executions affecting multiple market participants and/or securities. NASD Rule 11890 has been used both with respect to events affecting a single stock, such as an extraordinary erroneous order causing a large number of trades involving multiple market participants in a single stock (single stock events), and events affecting multiple stocks, such as a system malfunction resulting in a more widespread problem (multi-stock events).

In addition to the substantive changes to the clearly erroneous provisions described below, the proposed rule change structurally alters the provisions as well. FINRA is proposing to create a new clearly erroneous series of rules: FINRA Rule Series 11890. Under this umbrella would be (1) a general provision (Rule 11891) with accompanying Supplementary Material; (2) a rule governing clearly erroneous determinations for transactions in exchange-listed securities (Rule 11892) with accompanying Supplementary Material; (3) a rule governing clearly erroneous determinations for transactions in OTC Equity Securities (Rule 11893) with accompanying Supplementary Material; and (4) a rule governing review of FINRA staff determinations by the UPC Committee (Rule 11894).

Definition and General Guidelines

The proposed rule change creates Rule 11891, which defines the term ''clearly erroneous'' for purposes of the new FINRA Rule 11890 Series. The proposed rule specifies that ''the terms of a transaction are 'clearly erroneous' when there is an obvious error in any term, such as price, number of shares, or other unit of trading, or identification of the security.'' The language in the rule is based on the definition in the recently approved amendments to NYSE Arca Rule 7.10.[7]

The proposed rule change also includes four proposed paragraphs of Supplementary Material to Rule 11891. Proposed Supplementary Material .01 renumbers current NASD IM–11890–1 regarding a member's failure to abide by FINRA or UPC Committee rulings. Proposed Supplementary Material .02 and .03 set forth the general standards applicable to clearly erroneous determinations and clarify that FINRA generally considers a transaction to be clearly erroneous when there is a systemic problem that involves large numbers of parties or trades, or conditions where it would be in the best interests of the market. Further, extraordinary market conditions may include situations where an extraordinary event has occurred or is ongoing that has had a material effect on the market for a security traded over-the-counter or has caused major disruption to the marketplace. Supplementary Material .02 also emphasizes that members are responsible for ensuring that the appropriate price and type of order are entered into FINRA systems.

Finally, proposed Supplementary Material .04 specifically addresses suspicious trading activities such as unauthorized trading activity or attempts to manipulate stock prices by illegally gaining access to legitimate accounts or opening new accounts using false information (often referred to as ''account intrusion''). Although FINRA continues to be concerned about protecting markets from unauthorized or illegal activity like account intrusion that could disrupt a fair and orderly market, FINRA believes that its clearly erroneous authority does not extend to such suspicious trading activities. Rather, FINRA believes such activities relate to allegations of fraud and fall outside the scope of the clearly erroneous rules.[8] Consequently, FINRA is proposing the Supplementary Material to clarify this position while

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] FINRA will transfer the remaining rules in the Uniform Practice Code into the Consolidated FINRA Rulebook in a separate filing.

[5] *See* Securities Exchange Act Release No. 60706 (September 22, 2009), 74 FR 49416 (September 28, 2009) (approving SR–NYSEArca–2009–36).

[6] For purposes of the proposed rule change, the term ''OTC Equity Security'' has the same meaning as defined in FINRA Rule 6420, except that the term does not include any equity security that is traded on any national securities exchange.

[7] *See* Securities Exchange Act Release No. 60706 (September 22, 2009), 74 FR 49416 (September 28, 2009) (approving SR–NYSEArca–2009–36).

[8] In approving recent amendments to Nasdaq's clearly erroneous rule, the Commission noted that, ''[g]iven the fact that the Clearly Erroneous Rule is designed to address trades made in error and the more difficult factual analysis presented by expanding the rule's application beyond obvious errors,'' it was appropriate for Nasdaq to ''retain the original scope of the [clearly erroneous] rule'' rather than extend the rule to address account intrusion. *See* Securities Exchange Act Release No. 57826 (May 15, 2008), 73 FR 29802 (May 22, 2008).

also noting that members should routinely review the adequacy of their internal controls and ensure that appropriate system safeguards are in place to minimize or eliminate the potential for account intrusion.

Review of Transactions in Exchange-Listed Securities

Proposed Rule 11892 and its Supplementary Material set forth the standards FINRA uses to determine whether a transaction in an exchange-listed security is clearly erroneous. FINRA believes that coordinating with other self-regulatory organizations with the goal of having consistency and transparency regarding the clearly erroneous process is important to the marketplace and to investors. Consequently, for OTC transactions in exchange-listed securities that are reported to a FINRA system, such as a FINRA Trade Reporting Facility (''TRF'') or Alternative Display Facility (''ADF''), FINRA will generally follow the determination of a national securities exchange to break a trade (or multiple trades) when that national securities exchange has broken one or more trades at or near the price range in question at or near the time in question (in FINRA staff's sole discretion) such that FINRA breaking such trade(s) would be consistent with market integrity and investor protection. When multiple national securities exchanges have related trades, FINRA will leave a trade(s) unbroken when any of those national securities exchanges has left a trade(s) unbroken at or near the price range in question at or near the time in question (in FINRA staff's sole discretion) such that FINRA breaking such trade(s) would be inconsistent with market integrity and investor protection.[9]

With respect to OTC transactions in exchange-listed securities for which there is no corresponding or related on-exchange trading activity, FINRA believes that the best approach in determining whether to declare transactions clearly erroneous is to follow the exchanges' criteria when making a clearly erroneous determination. In this sector of the market, FINRA believes that consistency in application of clearly erroneous authority across markets is critical to ensure that one investor does not receive disparate treatment based solely on the ultimate execution or reporting venue of his or her order. Consequently, for OTC transactions in exchange-listed securities that are reported to a FINRA system, such as a FINRA TRF or the ADF, but for which there is no corresponding or related on-exchange trading activity, FINRA will generally make its own clearly erroneous determination.[10] However, to ensure that transactions in exchange-listed securities are treated consistently regardless of where the trade is executed (i.e., on an exchange or OTC), proposed Rule 11892 replicates the numerical thresholds used by the exchanges to determine whether a transaction is eligible for consideration as clearly erroneous. The proposed rule also establishes provisions for the use of alternative reference prices in unusual circumstances, additional factors that FINRA may consider when making a clearly erroneous determination, and numerical guidelines applicable to volatile market opens. Each of these provisions is modeled on similar provisions in the recently approved amendments to NYSE Arca Rule 7.10.[11]

Review of Transactions in OTC Equity Securities

Currently, NASD Rule 11890 governs FINRA's clearly erroneous process for both exchange-listed securities and OTC Equity Securities. The core purpose of the clearly erroneous rules is to grant FINRA authority to determine that a transaction is clearly erroneous with a goal of maintaining market integrity by declaring a transaction (or multiple transactions, if necessary) to be null and void if the terms of the trade are clearly out of line with objective market conditions for the security.[12] FINRA is proposing to apply its clearly erroneous authority somewhat differently depending on whether the security is listed on a national securities exchange or is an OTC Equity Security. For that reason, FINRA is proposing to create separate rules for the treatment of exchange-listed securities, which would be governed by Rule 11892, and OTC Equity Securities, which would be governed by Rule 11893.

Proposed Rule 11893 is structured similarly to the provisions for transactions in exchange-listed securities under proposed Rule 11892, including numerical guidelines, the use of alternative reference prices in unusual circumstances, and additional factors FINRA officers may consider when making a clearly erroneous determination. However, as is the case today, the proposed numerical guidelines for transactions in OTC Equity Securities are not the same as the guidelines used for exchange-listed securities. The proposed rule change would codify the numerical guidelines currently used by FINRA to determine whether a transaction is eligible for clearly erroneous consideration. In some instances, for example, the percentage deviations set forth in the numerical guidelines are based on a sliding scale where the maximum percentage deviation applies to the lower execution price in the range and the minimum percentage deviation applies to the higher execution price in the range. The sliding scale is applied in a generally linear fashion (i.e., prices at the lower end of the reference price range are generally assessed at the higher percentage range) and is intended to smooth the percentage changes from tier to tier and allow for more gradual deviations. Because the sliding scale is not applied on a strictly linear basis, FINRA has more discretion in applying the guidelines for executions within the reference price range rather than being strictly a calculation of percentages.

The following chart summarizes the proposed Numerical Guidelines for clearly erroneous determinations for OTC Equity Securities:

Reference price	Numerical guidelines (Subject transaction's percentage difference from the reference price)
$0.9999 and under	20%.
$1.0000 and up to and including $4.9999	Low end of range minimum 20%—High end of range minimum 10%.
$5.0000 and up to and including $74.9999	10%.
$75.0000 and up to and including $199.9999	Low end of range minimum 10%—High end of range minimum 5%.

[9] *See* proposed Rule 11892, Supplementary Material .01.

[10] Unlike the NYSE Arca rule regarding clearly erroneous determinations, the FINRA rules do not allow members to initiate reviews of transactions. All reviews conducted by FINRA are conducted on FINRA's own motion.

[11] *See* Securities Exchange Act Release No. 60706 (September 22, 2009), 74 FR 49416 (September 28, 2009) (approving SR–NYSEArca–2009–36).

[12] NASD Rule 11890 currently gives FINRA officers the authority to modify the terms of a transaction, in addition to declaring the transaction null and void. To conform FINRA's authority to the other exchanges' in the context of clearly erroneous determinations, FINRA is proposing to eliminate its ability to modify a clearly erroneous execution. *See id.*

Reference price	Numerical guidelines (Subject transaction's percentage difference from the reference price)
$200.0000 and up to and including $499.9999	5%.
$500.0000 and up to and including $999.9999	Low end of range minimum 5%—High end of range minimum 3%.
$1,000.0000 and over	3%.

For example, a transaction executed at $1.5000 that deviates by more than $0.30 (or 20%) from the prevailing market price may be eligible for cancellation as ''clearly erroneous''; whereas a transaction executed at $4.5000 that deviates by more than $0.45 (or 10%) from the prevailing market price may be eligible for cancellation as ''clearly erroneous.'' The provisions in proposed Rule 11893 regarding alternative reference prices and additional factors are substantially similar to those set forth in Rule 11892 for exchange-listed securities.

FINRA is also proposing to adopt Supplementary Material to Rule 11893 to emphasize that FINRA has historically exercised its clearly erroneous authority in very limited circumstances, in particular with respect to OTC Equity Securities. This more narrow approach for OTC Equity Securities is due to the differences in the OTC equity and exchange-listed markets, including the lack of compulsory information flows in the OTC equity market that come as a result of the listing process and the fact that aberrant trading in the OTC market is often due to issues other than systems problems or extraordinary events. The Supplementary Material explains that FINRA does not expect to use its clearly erroneous authority in most situations; rather, FINRA expects the parties to settle any dispute privately.

Review Procedures

Initial Determinations

As noted above, FINRA is proposing to remove language that currently allows a FINRA officer to modify one or more of the terms of a transaction under review. Under the proposed rules, the FINRA officer will only have the authority to break the trades. This proposed change is intended to conform with the rules of other exchanges and attempts to remove the subjectivity from the rule that is necessitated by an adjustment. The proposed rule governing initial determinations remains substantially similar to that in current NASD Rule 11890. An Executive Vice President of FINRA's Market Regulation Department or Transparency Services Department, or any officer designated by such Executive Vice President, may, on his or her own motion, review any transaction arising out of or reported through any FINRA facility. With respect to determinations involving transactions in exchange-listed securities, absent extraordinary circumstances, the officer shall take action generally within 30 minutes after becoming aware of the transaction. When extraordinary circumstances exist, any such action of the officer must be taken no later than the start of trading on the day following the date of execution(s) under review. With respect to determinations involving transactions in OTC Equity Securities, a FINRA officer must make a determination as soon as possible after becoming aware of the transaction, but in all cases by 3:00 p.m., Eastern Time, on the next trading day following the date of the transaction at issue. If a FINRA officer declares any transaction null and void, FINRA will notify each party involved in the transaction as soon as practicable, and any party aggrieved by the action may appeal such action in accordance with Rule 11894, unless the officer making the determination also determines that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest.

Appeals

FINRA is proposing to codify in a separate rule (Rule 11894) the provisions governing the appeal to the UPC Committee of a FINRA officer's determination to declare an execution clearly erroneous.[13] IM–11890–2, which concerns review by panels of the UPC Committee, will be incorporated into the text of the new rule. Under the rule, an appeal must be made in writing and must be received by FINRA within thirty minutes after the person making the appeal is given the notification of the determination being appealed. With respect to appeals regarding exchange-listed securities, determinations by the UPC Committee will be rendered as soon as practicable, but generally, on the same trading day as the execution(s) under review. On requests for appeal received after 3:00 p.m., Eastern Time, a determination will be rendered as soon as practicable, but in no case later than the trading day following the date of the execution(s) under review. With respect to appeals regarding OTC Equity Securities, determinations by the UPC Committee will be rendered as soon as practicable, but in no case later than two trading days following the date of the execution(s) under review.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[14] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that adopting guidelines to explain the application of the clearly erroneous process will provide clarity and consistency to the marketplace. In addition, FINRA believes if consistent standards are applied to this process across markets, then greater efficiency can be reached.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to

[13] As the rule makes clear, a FINRA officer's determination not to break a trade is not appealable.

[14] 15 U.S.C. 78*o*–3(b)(6).

90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2009–068 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–068. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–068 and should be submitted on or before November 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–25873 Filed 10–27–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60859; File No. SR–ISE–2009–64]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving a Proposed Rule Change Relating to Historical ISE Open/Close Trade Profile Fees

October 21, 2009.

On August 25, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Schedule of Fees to adopt reduced subscription fees for academic institutions for the sale of historical open and close volume data on ISE listed options. Notice of the proposed rule change was published for comment in the **Federal Register** on September 17, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

ISE currently sells a market data offering comprised of the entire opening and closing trade data of ISE listed options of both customers and firms (''ISE Open/Close Trade Profile'').[4] The ISE Open/Close Trade Profile enables subscribers to create their own proprietary put/call calculations. The data is compiled and formatted by ISE as an end of day file. This market data offering is currently available to both members and non-members on annual subscription basis.[5]

ISE also sells to both members and non-members historical ISE Open/Close Trade Profile, a market data offering comprised of the entire opening and closing trade data of both customers and firms that dates back to May 2005 (on an ad-hoc basis or as a complete set that dates back to May 2005). Ad-hoc subscribers can purchase this data for any number of months, beginning from May 2005 through the current month. Alternatively, subscribers can purchase the entire set of this data, beginning from May 2005 through the current month. The historical ISE Open/Close Trade Profile is compiled and formatted by ISE and sold as a zipped file. ISE charges ad-hoc subscribers $600 per request for each month of data and a discounted fee of $500 per request per month for subscribers that want the complete set, *i.e.*, from May 2005 to the present month.

The Exchange now proposes to adopt reduced fees for subscriptions to historical ISE Open/Close Trade Profile by academic institutions for their research purposes.[6] In order to encourage and promote academic studies of its market data, ISE proposes to charge a flat rate of $500 for up to 12 months of data or $1,000 for the complete data set. Academic institutions may not use the data in support of actual securities trading. The proposed discount applies only to the market data fees and does not cover any access or telecommunication charges that may be incurred by an academic institution. In addition, with the adoption of reduced fees for academic institutions, ISE is not waiving any of its contractual rights and all academic institutions that subscribe to this data will be required to execute the appropriate subscriber agreement.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(4) of the Act,[8] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities, and Section 6(b)(5) of

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60654 (September 17, 2009), 74 FR 47848 (''Notice'').

[4] *See* Securities Exchange Act Release No. 56254 (August 15, 2007), 72 FR 47104 (August 22, 2007) (approving SR–ISE–2007–70).

[5] The current subscription rate for both members and non-members is $600 per month.

[6] The Exchange stated that occasionally, academic institutions inquire with the Exchange about subscribing to the historical ISE Open/Close Trade Profile for research purposes but are not inclined to pay the full price.

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(4).

the Act,[9] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange proposes to reduce fees for subscriptions to its historical ISE Open/Close Trade Profile by academic institutions only if they use the data for their research purposes. The proposed fees will apply equally to all academic institutions. The proposed rule change should promote academic research, which can benefit all market participants. Further, the Commission notes that Options Price Reporting Authority (''OPRA'') has in place a similar Academic Waiver Policy, pursuant to which OPRA waives its fees for universities that wish to use its data for research and educational instruction purposes.[10]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–ISE–2009–64), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–25832 Filed 10–27–09; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78f(b)(5).

[10] *See* Securities Exchange Act Release 58424 (August 26, 2008), 73 FR 51545 (September 3, 2008) (Notice of Filing and Immediate Effectiveness of Proposed Amendment to the Options Price Reporting Authority's Academic Waiver Policy).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60857; File No. SR–CBOE–2009–074]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Interpretation and Policy .13 to Rule 5.3

October 21, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 20, 2009, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to revise CBOE Rule 5.3.13(1)(E) to amend the definition of Futures-Linked Securities for the trading of options on Index-Linked Securities. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Interpretation and Policy .13 to Rule 5.3 designates the listing and trading of options on ''Equity Index-Linked Securities,'' ''Commodity-Linked Securities,'' ''Currency-Linked Securities,'' ''Fixed Income Index-Linked Securities,'' ''Futures-Linked Securities'' and ''Multifactor Index-Linked Securities,'' collectively known as ''Index-Linked Securities'' that are principally traded on a national securities exchange and an ''NMS Stock'' (as defined in Rule 600 of Regulation NMS under the Securities and Exchange Act of 1934). The Exchange proposes to amend the definition of Futures-Linked Securities for the trading of options on Index-Linked Securities to include products linked to CBOE Volatility Index (''VIX'') futures. Specifically, the Exchange proposes to add VIX futures to the definition of a Futures Reference Asset in Rule 5.3.13(1)(E).

Index-Linked Securities are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments or market indexes of the foregoing (''Underlying Index'' or ''Underlying Indexes''). Index-Linked Securities are the non-convertible debt of an issuer that have a term of at least one (1) year but not greater than thirty (30) years. Despite the fact that Index-Linked Securities are linked to an underlying index, each trade as a single, exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard equity options apply to Index-Linked Securities.

Currently, the Exchange will consider listing and trading options on Index-Linked Securities provided the Index-Linked Securities meet the criteria for underlying securities set forth in Interpretation and Policy .01 to Rule 5.3 or the criteria set forth in Interpretation and Policy .13(3)(B) to Rule 5.3.

Index-Linked Securities must meet the criteria and guidelines for underlying securities set forth in Interpretation and Policy .01 Rule 5.3; or the Index-Linked Securities must be redeemable at the option of the holder at least on a weekly basis through the issuer at a price related to the applicable

underlying Reference Asset.[5] In addition, the issuing company is obligated to issue or repurchase the securities in aggregation units for cash or cash equivalents satisfactory to the issuer of Index-Linked Securities which underlie the option as described in the Index-Linked Securities prospectus. Options on Index-Linked Securities will continue to be subject to all Exchange rules governing the trading of equity options. The current continuing or maintenance listing standards for options traded on CBOE will continue to apply.

The VIX

CBOE originally developed the VIX in 1993 and at that time the VIX was calculated using S&P 100® Index options. CBOE introduced the current methodology for the VIX in September 2003 and it is now an index that uses the quotes of certain S&P 500® Index (''SPX'') option series to derive a measure of the volatility of the U.S. equity market. The VIX measures market expectations of near term volatility conveyed by the prices of options on the SPX. It provides investors with up-to-the-minute market estimates of expected stock market volatility over the next 30 calendar days by extracting implied volatilities from real-time index option bid/ask quotes.

VIX Futures

The CBOE Futures Exchange (''CFE'') began listing and trading VIX futures on March 26, 2004 under the ticker symbol VX. VIX Futures trade between the hours of 8:30 a.m.–3:15 p.m. Central Time (Chicago Time).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[6] of the Act, in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rules applicable to trading pursuant to generic listing and trading criteria, together with the Exchange's surveillance procedures applicable to trading in the securities covered by the proposed rules, serve to foster investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change as operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposed rule change is substantially similar to those of other options exchanges that have been previously approved by the Commission.[10] Therefore, the Commission designates the proposal operative upon filing to enable the Exchange to list and trade options on index-linked securities without delay.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2009–074 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–074. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be

[5] *See* Interpretation and Policy .13(3)(B) to Rule 5.3. For the purposes of Interpretation and Policy .13 to Rule 5.3, Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, Futures Reference Assets and Multifactor Reference Assets, are collectively referred to as ''Reference Assets.'' *See* Rule 5.3.13(2).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[10] *See* Securities Exchange Act Release Nos. 60822 (October 14, 2009), 74 FR 54114 (October 21, 2009) (SR–NYSEArca–2009–77); and 60823 (October 14, 2009), 74 FR 54112 (October 21, 2009) (SR–NYSEAmex–2009–59).

[11] For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2009–074 and should be submitted on or before November 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–25830 Filed 10–27–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60854; File No. SR–ISE–2009–84]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, LLC To Amend ISE Rules Relating to the Minimum Size Requirement for Quotations

October 21, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 19, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules pertaining to the minimum size requirement for quotations. The text of the proposed rule change is available on the Exchange's Web site *www.ise.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This proposed rule change is based on a filing previously submitted by the Chicago Board Options Exchange (''CBOE'') that was effective on filing.[5] ISE proposes to amend its rules pertaining to the minimum size requirement for quotations. Currently, ISE Rule 804 requires that unless the Exchange has declared a fast market pursuant to ISE Rule 704, a market maker may not initially enter a bid or offer of less than ten (10) contracts. ISE now proposes to amend its rules to allow the Exchange to set a minimum quotation size requirement on a class by class basis, provided the minimum set by the Exchange is at least one contract. ISE would not impose a minimum quotation size requirement greater than 10 contracts.

ISE recently listed options on Berkshire Hathaway Inc.'s Class B securities (''baby Berkshires'') and under the Exchange's current rules, ISE market makers are required to quote in this product for at least 10 contracts. With the underlying security trading above $3,000, the minimum value for a trade in baby Berkshire options is more than $30,000, which effectively removes ISE's market makers from competing with the other exchanges that do not have a 10 contract minimum quotation requirement. Pursuant to this proposed rule change, ISE expects to lower the minimum quotation size requirement for baby Berkshire options from 10 contracts to one contract. Further, ISE believes it should have the flexibility to change the minimum size requirement on a class by class basis depending on market conditions and the trading and liquidity in a particular option class and its underlying security. ISE notes that the minimum quotation size requirement for market makers on CBOE, NYSEArca and the Nasdaq Options Market is only one contract (*see* CBOE Rules 6.2B, 8.7, 8.14, 8.15A, NYSEArca Rule 6.37B and Nasdaq Options Market Rule Section 6(a)). As a result, ISE believes the proposed rule change is based on and similar to the rules of other options exchanges.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'')[6] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest, because it will permit the Exchange to set a minimum quotation size requirement on a class by class basis, provided the minimum size is at least one contract. ISE believes that this flexibility will enable the Exchange to take into consideration market conditions and the trading and liquidity in a particular option class and its underlying security.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 58828 (October 21, 2008), 73 FR 63749 (October 27, 2008) (SR–CBOE–2008–107).

[6] 15 U.S.C. 78a.

[7] 15 U.S.C. 78(f)(b).

[8] 15 U.S.C. 78(f)(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A)[9] of the Act and Rule 19b–4(f)(6)[10] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing.[11] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[12] which would make the rule change operative immediately.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to immediately begin to set the minimum quotation size on a class-by-class basis as is done currently on other exchanges.[13] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[15]

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. ISE has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See* note 5, *supra.*

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(3)(C).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2009–84 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–84. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2009–84 and should be submitted on or before November 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–25828 Filed 10–27–09; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2009–0064]

Office of the Commissioner; Cost-of-Living Increase and Other Determinations for 2010

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: Under title II of the Social Security Act (Act), there will be no cost-of-living increase in Social Security benefits effective for December 2009. As a result, the following items will remain at their 2009 levels:

(1) The Federal Supplemental Security Income (SSI) monthly benefit amounts for 2010, under title XVI of the Act, will remain $674 for an eligible individual, $1,011 for an eligible individual with an eligible spouse, and $338 for an essential person;

(2) The special benefit amount under title VIII of the Act for certain World War II veterans will remain $505.50 in 2010;

(3) The student earned income exclusion under title XVI of the Act will remain $1,640 per month in 2010 but not more than $6,600 in all of 2010;

(4) The dollar fee limit for services performed as a representative payee will remain $37 per month ($72 per month in the case of a beneficiary who is disabled and has an alcoholism or drug addiction condition that leaves him or her incapable of managing benefits) in 2010;

(5) The dollar limit on the administrative-cost assessment charged to attorneys representing claimants will remain $83 in 2010;

(6) The Old-Age, Survivors, and Disability Insurance (OASDI) contribution and benefit base will remain $106,800 for remuneration paid in 2010 and self-employment income earned in taxable years beginning in 2010;

(7) The monthly exempt amounts under the Social Security retirement earnings test for taxable years ending in calendar year 2010 will remain $1,180 and $3,140;

(8) The ''old-law'' contribution and benefit base under title II of the Act will remain $79,200 for 2010; and

(9) The monthly amount deemed to constitute substantial gainful activity for statutorily blind individuals in 2010 will remain $1,640.

The national average wage index for 2008 is $41,334.97. The following items are affected by this index:

(1) The dollar amounts (''bend points'') used in the primary insurance amount benefit formula for workers who become eligible for benefits, or who die before becoming eligible, in 2010 will be $761 and $4,586;

(2) The bend points used in the formula for computing maximum family benefits for workers who become eligible for benefits, or who die before becoming eligible, in 2010 will be $972, $1,403, and $1,830;

(3) The amount of taxable earnings a person must have to be credited with a quarter of coverage in 2010 will be $1,120;

(4) The monthly amount deemed to constitute substantial gainful activity for non-blind disabled persons will be $1,000 in 2010;

(5) The earnings threshold establishing a month as a part of a trial work period will be $720 for 2010; and

(6) Coverage thresholds for 2010 will be $1,700 for domestic workers and $1,500 for election officials and election workers.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Kunkel, Office of the Chief Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3013. Information relating to this announcement is available on our Internet site at *http://www.socialsecurity.gov/OACT/COLA/index.html.* For information on eligibility or claiming benefits, call 1–800–772–1213, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Act, we must publish on or before November 1 the national average wage index for 2008 (section 215(a)(1)(D)), the amount of earnings required to be credited with a quarter of coverage in 2010 (section 213(d)(2)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 2010 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 2010 (section 203(a)(2)(C)).

Cost-of-Living Increases

General

There will be no cost-of-living increase for benefits under titles II and XVI of the Act.

Computation

By law a cost-of-living increase for benefits is set based on the percentage increase in the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers from the last computation quarter (the third quarter of 2008 in this case) to the third quarter of the current year (2009 in this case).

Section 215(i)(1) of the Act provides that the CPI for a cost-of-living computation quarter shall be the arithmetic mean of this index for the 3 months in that quarter. In accordance with 20 CFR 404.275, we round the arithmetic mean, if necessary, to the nearest 0.001. The CPI for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 2008, is: For July 2008, 216.304; for August 2008, 215.247; and for September 2008, 214.935. The arithmetic mean for that calendar quarter is 215.495. The corresponding CPI for each month in the quarter ending September 30, 2009, is: For July 2009, 210.526; for August 2009, 211.156; and for September 2009, 211.322. The arithmetic mean for this calendar quarter is 211.001. Thus, because the CPI for the calendar quarter ending September 30, 2009, is not greater than the CPI for the calendar quarter ending September 30, 2008, the calendar quarter ending September 30, 2009, is not a cost-of-living computation quarter and there is no cost-of-living increase.

Other Program Amounts That Change Based on the Cost-of-Living Increase

Several other program amounts also adjust based on the cost-of-living increase. These include the title VIII benefit amount, the student earned income exclusion, the fee for services performed by a representative payee, and the attorney assessment fee. Because there will be no cost-of-living increase, these program amounts will not increase in 2010, but rather will remain at their 2009 levels.

Program Amounts That Change Based on the Increase in the National Average Wage Index, but Only When There Is a Cost-of-Living Increase

Certain other program amounts are adjusted annually based on the increase in the national average wage index, rather than the CPI increase, but only if there also is a cost-of-living increase in benefits that year (as determined under section 215(i) of the Act). These amounts include the OASDI contribution and benefit base, the retirement earnings test exempt amounts, the ''old-law'' contribution and benefit base, and the substantial gainful activity amount for individuals who are statutorily blind. Because there is no cost-of-living increase this year, these amounts will not increase in 2010, but rather will remain at their 2009 levels.

Program Amounts That Change Based on the Increase in the National Average Wage Index, Without Regard to the Cost-of-Living Increase

Some program amounts are adjusted annually based on the increase in the national average wage index whether there is a cost-of-living increase in that year or not. These include:

- The dollar amounts (''bend points'') in the formulae used to compute the primary insurance amount and maximum family benefit for workers who become eligible for benefits, or die before becoming eligible, in 2010;
- The amount of taxable earnings required to earn a quarter of coverage;
- The substantial gainful activity amount for non-blind disabled individuals;
- The earnings threshold to establish a trial work period;
- The coverage threshold for election officials and election workers; and
- The domestic employee coverage threshold.

These amounts will increase in 2010 based on the increase in the national average wage. In the sections that follow, we explain the calculation of the percentage increase in the national average wage and the corresponding increases in each of these program amounts.

National Average Wage Index for 2008

Computation

We have determined the national average wage index for calendar year 2008 based on the 2007 national average wage index of $40,405.48 announced in the **Federal Register** on October 30, 2008 (73 FR 64651), along with the percentage increase in average wages from 2007 to 2008 measured by annual wage data. We tabulate the annual wage data, including contributions to deferred compensation plans, as required by section 209(k) of the Act. The average amounts of wages calculated directly from these data were $38,760.95 and $39,652.61 for 2007 and 2008, respectively. To determine the national average wage index for 2008 at a level

that is consistent with the national average wage indexing series for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), we multiply the 2007 national average wage index of $40,405.48 by the percentage increase in average wages from 2007 to 2008 (based on SSA-tabulated wage data) as follows, with the result rounded to the nearest cent.

Amount

Multiplying the national average wage index for 2007 ($40,405.48) by the ratio of the average wage for 2008 ($39,652.61) to that for 2007 ($38,760.95) produces the 2008 index, $41,334.97. The national average wage index for calendar year 2008 is about 2.30 percent greater than the 2007 index.

Computing Benefits After 1978

General

The Social Security Amendments of 1977 provided a method for computing benefits that generally applies when a worker first becomes eligible for benefits after 1978. This method uses the worker's ''average indexed monthly earnings'' to compute the primary insurance amount. We adjust the computation formula each year to reflect changes in general wage levels, as measured by the national average wage index.

We also adjust, or ''index,'' a worker's earnings to reflect the change in general wage levels that occurred during the worker's years of employment. Such indexing ensures that a worker's future benefit level will reflect the general rise in the standard of living that will occur during his or her working lifetime. To compute the average indexed monthly earnings, we first determine the required number of years of earnings. Then we select that number of years with the highest indexed earnings, add the indexed earnings, and divide the total amount by the total number of months in those years. We then round the resulting average amount down to the next lower dollar amount. The result is the average indexed monthly earnings.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled before age 62, or dying before attaining age 62, in 2010, we divide the national average wage index for 2008, $41,334.97, by the national average wage index for each year prior to 2008 in which the worker had earnings. Then we multiply the actual wages and self-employment income, as defined in section 211(b) of the Act and credited for each year, by the corresponding ratio to obtain the worker's indexed earnings for each year before 2008. We consider any earnings in 2008 or later at face value, without indexing. We then compute the average indexed monthly earnings for determining the worker's primary insurance amount for 2010.

Computing the Primary Insurance Amount

The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. We call the dollar amounts in the formula governing the portions of the average indexed monthly earnings the ''bend points'' of the formula. Thus, the bend points for 1979 were $180 and $1,085.

To obtain the bend points for 2010, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2008 to that average for 1977. We then round these results to the nearest dollar. Multiplying the 1979 amounts of $180 and $1,085 by the ratio of the national average wage index for 2008 ($41,334.97) to that for 1977 ($9,779.44) produces the amounts of $760.81 and $4,585.99. We round these to $761 and $4,586. Accordingly, the portions of the average indexed monthly earnings to be used in 2010 are the first $761, the amount between $761 and $4,586, and the amount over $4,586.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 2010, or who die in 2010 before becoming eligible for benefits, their primary insurance amount will be the sum of:

(a) 90 percent of the first $761 of their average indexed monthly earnings, plus

(b) 32 percent of their average indexed monthly earnings over $761 and through $4,586, plus

(c) 15 percent of their average indexed monthly earnings over $4,586.

We round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment described above are contained in section 215(a) of the Act.

Maximum Benefits Payable to a Family

General

The 1977 amendments continued the long established policy of limiting the total monthly benefits that a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but changed the method of computing the maximum amount of benefits that may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96–265) established a formula for computing the maximum benefits payable to the family of a disabled worker. This formula applies to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, we compute the family maximum payable the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum

The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. We refer to such dollar amounts in the formula as the ''bend points'' of the family-maximum formula.

To obtain the bend points for 2010, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2008 to that average for 1977. Then we round this amount to the nearest dollar. Multiplying the amounts of $230, $332, and $433 by the ratio of the national average wage index for 2008 ($41,334.97) to that for 1977 ($9,779.44) produces the amounts of $972.15, $1,403.27, and $1,830.17. We round these amounts to $972, $1,403, and $1,830. Accordingly, the portions of the primary insurance amounts to be used in 2010 are the first $972, the amount between $972 and $1,403, the amount between $1,403 and $1,830, and the amount over $1,830.

Consequently, for the family of a worker who becomes age 62 or dies in 2010 before age 62, we will compute the total amount of benefits payable to them so that it does not exceed:

(a) 150 percent of the first $972 of the worker's primary insurance amount, plus

(b) 272 percent of the worker's primary insurance amount over $972 through $1,403, plus

(c) 134 percent of the worker's primary insurance amount over $1,403 through $1,830, plus

(d) 175 percent of the worker's primary insurance amount over $1,830.

We then round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment described above are contained in section 203(a) of the Act.

Quarter of Coverage Amount

General

The amount of earnings required for a quarter of coverage in 2010 is $1,120. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, we generally credited an individual with a quarter of coverage for each quarter in which wages of $50 or more were paid, or with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, employers generally report wages on an annual basis instead of a quarterly basis. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978, up to a maximum of 4 quarters of coverage for the year.

Computation

Under the prescribed formula, the quarter of coverage amount for 2010 shall be the larger of: (1) The 1978 amount of $250 multiplied by the ratio of the national average wage index for 2008 to that for 1976; or (2) the current amount of $1,090. Section 213(d) further provides that if the resulting amount is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Quarter of Coverage Amount

Multiplying the 1978 quarter of coverage amount ($250) by the ratio of the national average wage index for 2008 ($41,334.97) to that for 1976 ($9,226.48) produces the amount of $1,120.01. We then round this amount to $1,120. Because $1,120 exceeds the current amount of $1,090, the quarter of coverage amount is $1,120 for 2010.

Substantial Gainful Activity Amount for Non-Blind Disabled Individuals

General

A finding of disability under titles II and XVI of the Act requires that a person, except for a title XVI disabled child, be unable to engage in substantial gainful activity (SGA). A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability. Section 223(d)(4)(A) of the Act specifies a higher SGA amount for statutorily blind individuals under title II while Federal regulations (20 CFR 404.1574 and 416.974) specify a lower SGA amount for non-blind individuals.

Computation

The monthly SGA amount for non-blind disabled individuals for 2010 shall be the larger of: (1) Such amount for 2000 multiplied by the ratio of the national average wage index for 2008 to that for 1998; or (2) such amount for 2009. In either case, if the resulting amount is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Amount

Multiplying the 2000 monthly SGA amount for non-blind individuals ($700) by the ratio of the national average wage index for 2008 ($41,334.97) to that for 1998 ($28,861.44) produces the amount of $1,002.53. We then round this amount to $1,000. Because $1,000 is larger than the current amount of $980, the monthly SGA amount for non-blind disabled individuals is $1,000 for 2010.

Trial Work Period Earnings Threshold

General

During a trial work period, a beneficiary receiving Social Security disability benefits may test his or her ability to work and still be considered disabled. We do not consider services performed during the trial work period as showing that the disability has ended until services have been performed in at least 9 months (not necessarily consecutive) in a rolling 60-month period. In 2009, any month in which earnings exceed $700 is considered a month of services for an individual's trial work period. In 2010, this monthly amount increases to $720.

Computation

The method used to determine the new amount is set forth in our regulations at 20 CFR 404.1592(b). Monthly earnings in 2010, used to determine whether a month is part of a trial work period, is such amount for 2001 ($530) multiplied by the ratio of the national average wage index for 2008 to that for 1999, or, if larger, such amount for 2009. If the amount so calculated is not a multiple of $10, we round it to the nearest multiple of $10.

Amount

Multiplying the 2001 monthly earnings threshold ($530) by the ratio of the national average wage index for 2008 ($41,334.97) to that for 1999 ($30,469.84) produces the amount of $718.99. We then round this amount to $720. Because $720 is larger than the current amount of $700, the monthly earnings threshold is $720 for 2010.

Domestic Employee Coverage Threshold

General

The minimum amount a domestic worker must earn so that such earnings are covered under Social Security or Medicare is the domestic employee coverage threshold. For 2010, this threshold is $1,700. Section 3121(x) of the Internal Revenue Code provides the formula for increasing the threshold.

Computation

Under the formula, the domestic employee coverage threshold amount for 2010 shall be equal to the 1995 amount of $1,000 multiplied by the ratio of the national average wage index for 2008 to that for 1993. If the resulting amount is not a multiple of $100, it shall be rounded to the next lower multiple of $100.

Domestic Employee Coverage Threshold Amount

Multiplying the 1995 domestic employee coverage threshold amount ($1,000) by the ratio of the national average wage index for 2008 ($41,334.97) to that for 1993 ($23,132.67) produces the amount of $1,786.87. We then round this amount to $1,700. Accordingly, the domestic employee coverage threshold amount is $1,700 for 2010.

Election Official and Election Worker Coverage Threshold

General

The minimum amount an election official and election worker must earn so that such earnings are covered under Social Security or Medicare is the election official and election worker coverage threshold. For 2010, this threshold is $1,500. Section 218(c)(8)(B) of the Act provides the formula for increasing the threshold.

Computation

Under the formula, the election official and election worker coverage threshold amount for 2010 shall be equal to the 1999 amount of $1,000

multiplied by the ratio of the national average wage index for 2008 to that for 1997. If the amount so determined is not a multiple of $100, it shall be rounded to the nearest multiple of $100.

Election Official and Election Worker Coverage Threshold Amount

Multiplying the 1999 coverage threshold amount ($1,000) by the ratio of the national average wage index for 2008 ($41,334.97) to that for 1997 ($27,426.00) produces the amount of $1,507.15. We then round this amount to $1,500. Accordingly, the election official and election worker coverage threshold amount is $1,500 for 2010.

(Catalog of Federal Domestic Assistance: Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.004 Social Security-Survivors Insurance; 96.006 Supplemental Security Income)

Dated: October 20, 2009.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. E9–25930 Filed 10–27–09; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 6797]

60-Day Notice of Proposed Information Collections: Two Information Collections

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collections described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Brokering Prior Approval (License).
- *OMB Control Number:* 1405–0142.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
- *Form Number:* None.
- *Respondents:* Business and Nonprofit Organizations.
- *Estimated Number of Respondents:* 980.
- *Estimated Number of Responses:* 100.
- *Average Hours per Response:* 2 hours.
- *Total Estimated Burden:* 200 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain Benefits.
- *Title of Information Collection:* Annual Brokering Report.
- *OMB Control Number:* 1405–0141.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
- *Form Number:* None.
- *Respondents:* Business and Nonprofit Organizations.
- *Estimated Number of Respondents:* 980.
- *Estimated Number of Responses:* 600.
- *Average Hours per Response:* 2 hours.
- *Total Estimated Burden:* 1,200 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Mandatory.

DATES: The Department will accept comments from the public up to 60 days from October 28, 2009.

ADDRESSES: Comments and questions should be directed to Nicholas Memos, Office of Defense Trade Controls Policy, Department of State, who may be reached via the following methods:

- *E-mail: memosni@state.gov.*
- *Mail:* Nicholas Memos, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112
- *Fax:* 202–261–8199.

You must include the information collection title in the subject lines of your message/letter.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the information collection and supporting documents, to Nicholas Memos, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112, who may be reached via phone at (202) 663–2804, or via e-mail at *memosni@state.gov*.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The export, temporary import, temporary export and brokering of defense articles, defense services and related technical data are licensed by the Directorate of Defense Trade Controls in accordance with the International Traffic in Arms Regulations (22 CFR parts 120–130) and Section 38 of the Arms Export Control Act. Those of the public who manufacture or export defense articles, defense services, and related technical data, or the brokering thereof, must register with the Department of State. Persons desiring to engage in export, temporary import, and brokering activities must submit an application or written request to conduct the transaction to the Department to obtain a decision whether it is in the interests of U.S. foreign policy and national security to approve the transaction. Also, registered brokers must submit annual reports regarding all brokering activity that was transacted, and registered manufacturers and exporter must maintain records of defense trade activities for five years.

Methodology: These forms/information collections may be sent to the Directorate of Defense Trade Controls via the following methods: electronically, mail, personal delivery, and/or fax.

Dated: October 20, 2009.

Robert S. Kovac,

Acting Deputy Assistant Secretary for Defense Trade, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. E9–25953 Filed 10–27–09; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 6781]

Announcement of a Meeting of the International Telecommunication Advisory Committee

SUMMARY: This notice announces a meeting of the International Telecommunication Advisory Committee (ITAC) to prepare for the International Telecommunication Union (ITU) World Telecommunication Development Conference.

The ITAC will meet to begin preparation of advice for the U.S. government for the ITU World Telecommunication Development Conference, which will be held in May 2010 in Hyderabad, India. There will also be reports on recent developments

at the ITU Council meeting, the Internet Governance Forum, and CITEL.

The ITAC will meet from 2 to 4 p.m. on November 24, 2009 at 1120 20th Street, NW.,10th floor, Washington, DC 20036. This meeting is open to the public as seating capacity allows. The public will have an opportunity to provide comments at this meeting. Any requests for reasonable accommodation should be made at least 7 days before the meeting. All such requests will be considered, however, requests made after that date might not be possible to fulfill. Those desiring further information on this meeting may contact the ITAC Secretariat at *jillsonad@state.gov* or at (202) 647–2592.

Dated: October 15, 2009.

Cecily C. Holiday,

International Communications & Information Policy, U.S. Department of State.

[FR Doc. E9–25958 Filed 10–27–09; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 6668]

Renewal and Amendment of International Security Advisory Board Charter

The Department of State announces the Charter renewal and amendment of the International Security Advisory Board (ISAB).

The purpose of the ISAB is to provide the Department with a continuing source of independent advice on all aspects of arms control, disarmament, nonproliferation, political-military issues, international security, and related aspects of public diplomacy. The ISAB will remain in existence for two years after the filing date of the Charter unless terminated or renewed sooner.

For more information, contact Kerry Kartchner, Acting Executive Director of the International Security Advisory Board, Department of State, Washington, DC 20520, telephone: (202) 647–5824

Dated: September 15, 2009.

Kerry Kartchner,

Acting Executive Director, International Security Advisory Board, U.S. Department of State.

[FR Doc. E9–25956 Filed 10–27–09; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Tier 1 Environmental Impact Statement: East Baton Rouge, West Baton Rouge, Iberville, Ascension, and Livingston Parishes, LA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent amendment.

SUMMARY: The FHWA is issuing this notice to advise the public that the February 13, 2008 Notice of Intent for the subject Tier 1 Environmental Impact Statement is amended to add the Louisiana Department of Transportation and Development (DOTD) as a Joint Lead Agency.

FOR FURTHER INFORMATION CONTACT: Mr. Carl M. Highsmith, Project Delivery Team Leader, Federal Highway Administration, 5304 Flanders Drive, Suite A, Baton Rouge, Louisiana 70808, Telephone: (225) 757–7615, or Ms. Noel Ardoin, Environmental Engineer Administrator, Louisiana Department of Transportation and Development, Room 201AA, 1201 Capitol Access Road, Post Office Box 94245, Baton Rouge, Louisiana 70804–9245, Telephone: (225) 242–4501 or Mr. Bryan K. Harmon, City of Baton Rouge, Parish of East Baton Rouge, Department of Public Works, Engineering Division, Deputy Director/Chief Engineer, Room 409, Municipal Building, 300 North Boulevard, Post Office Box 1471, Baton Rouge, LA 70821, Telephone: (225) 389–3186. Project information can be found at the project Internet Web site at *http://www.brloop.com.*

SUPPLEMENTARY INFORMATION: The Louisiana Department of Transportation and Development agreed to be a Joint Lead Agency for the Baton Rouge Loop Tier 1 Environmental Impact Statement in September 2009.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities, apply to this program.)

Authority: 23 U.S.C., 315; 23 CFR 771.123.

Dated: October 6, 2009.

Charles W. Bolinger,

Division Administrator, FHWA, Louisiana Division.

[FR Doc. E9–26020 Filed 10–27–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–42]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before November 17, 2009.

ADDRESSES: You may send comments identified by Docket Number [Insert docket number, for example, FAA–200X–XXXXX] using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to

http://www.regulations.gov at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ralen Gao, Office of Rulemaking, ARM–209, Federal Aviation Administration, 800 Independent Avenue, SW., Room 810, Washington, DC 20591, fax 202–267–5075, telephone 202–267–3168.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 22, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–20049–0244.
Petitioner: NetJets Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 21.197(c)(2) & (3).
Description of Relief Sought: NetJets seeks an exemption from the requirements of § 21.197(c)(2) in order to be eligible for a special flight permit with continuing authorization for its aircraft, which are maintained as described in § 135.411(a)(1), so it could ferry aircraft that may not meet applicable airworthiness requirements but are capable of safe flight for the purpose of flying aircraft to a base where maintenance or alterations are to be performed.

[FR Doc. E9–25881 Filed 10–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–46]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before November 17, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0894 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Anna Bruse, 202–267–9655, or Tyneka L. Thomas, 202–267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 22, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking,

Petition For Exemption

Docket No.: FAA–2009–0894.
Petitioner: Centurion Air Cargo, Inc.
Section of 14 CFR Affected: § 121.503(a).
Description of Relief Sought: Centurion Air Cargo seeks an exemption from 14 CFR 121.503(a) to reduce the prescribed flight time limitations for two-pilot crews in Supplemental operations. Specifically, Centurion Air Cargo seeks to allow their MD–11 flight crews to conduct flight operations in excess of eight (8) hours within a twenty-four hour period specific to a single route operating between Miami, FL (KMIA) and Buenos Aires, Argentina's Ezeiza Airport (SAEZ). Their petition provides for a proposed flight time between the city pairs not to exceed eight hours and fifteen minutes (8 hrs and 15 minutes). Centurion Air Cargo proposes certain fatigue mitigations initiatives as a means to establish and maintain an equivalent level of safety.

[FR Doc. E9–25880 Filed 10–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 22, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11020, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before November 27, 2009 to be assured of consideration.

Office of Financial Stability (OFS)

OMB Number: 1505–0218.
Type of Review: Extension.
Title: Application for Grants to States for Low-Income Housing Projects in lieu of Tax Credits.
Description: Authorized under the American Recovery and Reinvestment Act (ARRA), hereafter Recovery Act of 2009 (Pub. L. 111–5), the Department of the Treasury is implementing several provisions of the Act, more specifically Division B—Tax, Unemployment, Health, State Fiscal Relief, and Other Provisions. Among these components is a program which requires Treasury to make payments, in lieu of a tax credit, to state housing credit agencies. State housing credit agencies use the funds to

make subawards to finance the construction or acquisition and rehabilitation of qualified low-income buildings. The collection of information is necessary to properly identify recipients and determine the appropriate amount of funding. The information will be used to (1) Identify eligible recipients; (2) determine the appropriate amount of funding; (3) ensure compliance with applicable laws; and (4) report on the effectiveness of the program.

Respondents: Individuals or Households.

Estimated Total Reporting Burden: 14 hours.

Clearance Officer: Ellen Neubauer, 202–622–5338, 1500 Pennsylvania Avenue, Room 2064D, Washington, DC 20220.

OMB Reviewer: OIRA Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, *oira_submission@omb.eop.gov.*

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E9–25896 Filed 10–27–09; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Privacy Act of 1974, as Amended

AGENCY: Departmental Offices, Treasury.

ACTION: Final Notice of Proposed New Privacy Act System of Records for the Home Affordable Modification Program.

SUMMARY: The U.S. Department of the Treasury proposed in August 2009 to establish a new System of Records under the Privacy Act known as ''Home Affordable Modification Program—Treasury/DO.'' This system of records would be established primarily to administer the Home Affordable Modification Program and related homeownership preservation programs (''HAMP''). This notice is to inform the public that one submitter has provided comments in response to the proposed Privacy Act notice published on August 3, 2009, at 74 FR 38484, and that minor changes have been made to the proposed notice in light of these comments.

DATES: Confirmation of effective date: September 14, 2009.

FOR FURTHER INFORMATION CONTACT: Theodore R. Kowalsky, Manager, Data & Information Technology, Office of Fiscal & Financial Agents, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, 202–927–9445 or at *Ted.Kowalsky@do.treas.gov*.

SUPPLEMENTARY INFORMATION: The Department established HAMP, pursuant to the Emergency Economic Stabilization Act of 2008 (Pub. L. 110–343) (the ''EESA''), to enable eligible homeowners who have a record of making timely mortgage payments, but are experiencing hardships in doing so, to modify the principal amounts and interest rates of their mortgage loans. This new System of Records will provide Treasury and its Financial Agents with access to certain information about mortgage borrowers and their respective home mortgage loans that is necessary to administer the HAMP.

Comments were received from one submitter in response to the proposed Privacy Act notice. Minor changes have been made to the proposed Privacy Act Notice in light of these comments. The Department does not believe that these modifications impact the original effective date for this notice (September 14, 2009), or the active implementation of this System of Records. Accordingly, we are publishing this Final Notice of a Privacy Act System of Records. This Final Notice also includes several new HAMP production and backup system locations which are managed by or on behalf of the Federal National Mortgage Association (''Fannie Mae'') and the Federal Home Loan Mortgage Corporation (''Freddie Mac''), both of which have been designated as Financial Agents of the Department.

The Department received comments from one submitter concerning thirteen of the fifteen routine uses set forth in the proposed system of records, the ''Home Affordable Modification Program Records—Treasury/DO.'' These comments generally expressed concern that the routine uses for the proposed System of Records were too broadly defined and would unduly invade the privacy of HAMP applicants. The submitter also suggested that the Department should seek express written consent from loan modification applicants before making any use of personally identifiable information (''PII'') in execution of the HAMP. No comments were received regarding routine uses (1), (8), (12) or (15).

In addressing these comments, it is important to note first that the HAMP is a Department program aimed at incentivizing mortgage servicers to modify borrower loans, thereby reducing the financial burden on millions of homeowners across the United States. The majority of the routine use clauses in this System of Records Notice are aimed at disclosing borrower information in an effort to effectively manage and appropriately monitor the performance of loan servicers in meeting their obligations under the HAMP program. Notably, in order to participate in the HAMP, all borrowers must agree to a mandatory consent provision which expressly authorizes the disclosure of information to Fannie Mae, Freddie Mac, the Department, and entities related to the HAMP program.

After careful consideration of the comments received, the Department concludes that routine uses (2), (4), (6), (7), (9), (11), and (14) will remain unchanged. The Department believes that these routine uses are consistent with the statutory authority of the Department of the Treasury to carry out the HAMP consistent with its mandate under the EESA. Additionally, routine use (4) is required by the Office of Management and Budget (''OMB'') for all agency systems of records, as set forth in OMB's supplementary guidance issued on November 21, 1975.

With regard to routine use (14), the Department believes that this routine use is consistent with the policies and requirements established by OMB in OMB Memorandum M–07–16, ''Safeguarding Against and Responding to the Breach of Personally Identifiable Information [PII],'' dated May 22, 2007. This OMB memorandum directs each federal agency to develop and publish a routine use in order to be able to disclose information regarding a breach to individuals affected by it, as well as to persons and entities that are in a position to assist the agency in preventing or minimizing any harm from a breach. The language of routine use (14) is identical to the language set forth in OMB's memorandum. In addition to publishing the routine use, agencies are also required to implement the processes outlined in M–07–16 by establishing an agency response team consisting of senior officials. We also note that OMB Memorandum M–06–19, ''Reporting Incidents Involving Personally Identifiable Information and Incorporating the Cost for Security in Agency Information Technology Investments,'' instructs agencies to report incidents involving PII to the U.S. Computer Emergency Readiness Team within one hour of discovering the incident and advises agencies not to distinguish between actual and suspected incidents. The Department needs to be able to share information about a breach with appropriate persons and entities in order to mitigate the harmful effects of the unauthorized disclosure of confidential or private

information about an individual. Accordingly, the Department does not believe that an amendment to this routine use is warranted. OMB documents are available at: *http://www.whitehouse.gov/omb/inforeg_infopoltech/.*

In response to public comments that expressed concern about the use of PII collected from homeowners under the HAMP, the Department has amended several routine uses in this System of Records Notice to ensure that it authorizes the dissemination of PII only where necessary to support the HAMP. The revisions are as follows:

Routine use (3) has been amended so as to authorize the disclosure of data only pursuant to a court order.

Routine use (5) has been modified so as to permit disclosure only if the investigation pertains to the HAMP program.

Routine use (10) has been modified to detail further the specific uses of the data collected and to harmonize routine uses (8) and (10) by stipulating that employees, agents, and contractors of Financial Agents, or contractors to the Department of the Treasury to whom information is disclosed, are each subject to the same or equivalent rules and regulations that apply to the Department's officers and employees under the Privacy Act.

Routine use (13) has been modified so as to permit disclosure to the Department of Housing and Urban Development and the Federal Housing Finance Agency in the absence of a complaint or inquiry.

The revised System of Records, entitled ''Home Affordable Modification Program—Treasury/DO .218,'' is published in its entirety below.

Dated: October 19, 2009.

Melissa Hartman,

Acting Deputy Assistant Secretary, Privacy and Treasury Records.

TREASURY/DO .218

SYSTEM NAME:

Home Affordable Modification Program Records—Treasury/DO.

SYSTEM LOCATION:

The Office of Financial Stability, Department of the Treasury, Washington, DC. Other facilities that maintain this system of records are located in: Urbana, MD, Dallas, TX, and a backup facility located in Reston, VA, all belonging to the Federal National Mortgage Association (''Fannie Mae''); and in McLean, VA, Herndon, VA, and Reston, VA, facilities belonging to the Federal Home Loan Mortgage Corporation (''Freddie Mac''). Both Fannie Mae and Freddie Mac have been designated as Financial Agents for the Home Affordable Modification Program (''HAMP'').

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records contains information about mortgage borrowers that is submitted to the Department or its Financial Agents by loan servicers that participate in HAMP. Information collected pursuant to HAMP is subject to the Privacy Act only to the extent that it concerns individuals; information pertaining to corporations and other business entities and organizations is not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains loan-level information about individual mortgage borrowers (including loan records and financial records). Typically, these records include, but are not limited to, the individual's name, Social Security Number, mailing address, and monthly income, as well as the location of the property subject to the loan, property value information, payment history, and type of mortgage.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Emergency Economic Stabilization Act of 2008 (Pub. L. 110–343) (the ''EESA'').

PURPOSE(S):

The purpose of this system of records is to facilitate administration of HAMP by the Department and its Financial Agents, including by enabling them to (i) collect and utilize information collected from mortgage loan servicers, including loan-level information about individual mortgage holders; and (ii) produce reports on the performance of HAMP, such as reports that concern loan modification eligibility and ''exception reports'' that identify certain issues that loan servicers may experience with servicing loans.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court order where arguably relevant to a proceeding, or in connection with criminal law proceedings;

(4) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Provide information to third parties during the course of a Department investigation as it relates to HAMP to the extent necessary to obtain information pertinent to that investigation;

(6) Disclose information to a consumer reporting agency to use in obtaining credit reports;

(7) Disclose information to a debt collection agency for use in debt collection services;

(8) Disclose information to a Financial Agent of the Department, its employees, agents, and contractors, or to a contractor of the Department, for the purpose of ensuring the efficient administration of HAMP and compliance with relevant guidelines, agreements, directives and requirements, and subject to the same or equivalent limitations applicable to Department's officers and employees under the Privacy Act;

(9) Disclose information originating or derived from participating loan servicers back to the same loan servicers as needed, for the purposes of audit, quality control, and reconciliation and response to borrower requests about that same borrower;

(10) Disclose information to Financial Agents, financial institutions, financial custodians, and contractors to: (a) Process mortgage loan modification applications, including, but not limited to, enrollment forms; (b) implement, analyze and modify programs relating to HAMP; (c) investigate and correct erroneous information submitted to the Department or its Financial Agents; (d) compile and review data and statistics and perform research, modeling and data analysis to improve the quality of services provided under HAMP or otherwise improve the efficiency or administration of HAMP; or (e) develop, test and enhance computer systems

used to administer HAMP; with all activities subject to the same or equivalent limitations applicable to Department's officers and employees under the Privacy Act;

(11) Disclose information to financial institutions, including banks and credit unions, for the purpose of disbursing payments and/or investigating the accuracy of information required to complete transactions pertaining to HAMP and for administrative purposes, such as resolving questions about a transaction;

(12) Disclose information to the appropriate Federal financial regulator or State financial regulator, or to the appropriate Consumer Protection agency, if that agency has jurisdiction over the subject matter of a complaint or inquiry, or the entity that is the subject of the complaint or inquiry;

(13) Disclose information and statistics to the Department of Housing & Urban Development and the Federal Housing Finance Agency to improve the quality of services provided under HAMP and to report on the program's overall execution and progress;

(14) Disclose information to appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(15) Disclose information to the U.S. Department of Justice (''DOJ'') for its use in providing legal advice to the Department or in representing the Department in a proceeding before a court, adjudicative body, or other administrative body before which the Department is authorized to appear, where the use of such information by the DOJ is deemed by the Department to be relevant and necessary to the litigation, and such proceeding names as a party or interests:

(a) The Department or any component thereof, including the Office of Financial Stability (''OFS'');

(b) Any employee of the Department in his or her official capacity;

(c) Any employee of the Department in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the Department determines that litigation is likely to affect the Department or any of its components, including OFS.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in the system of records is stored in a transactional database and an operational data store. Information from the system will also be captured in hard-copy form and stored in filing cabinets managed by personnel working on HAMP.

RETRIEVABILITY:

Information about individuals may be retrieved from the system by reference including the mortgage borrower's name, Social Security Number, address, or loan number.

SAFEGUARDS:

Safeguards designed to protect information contained in the system against unauthorized disclosure and access include, but are not limited to: (i) Department and Financial Agent policies and procedures governing privacy, information security, operational risk management, and change management; (ii) requiring Financial Agent employees to adhere to a code of conduct concerning the aforementioned policies and procedures; (iii) conducting background on all personnel with access to the system of records; (iv) training relevant personnel on privacy and information security; (v) tracking and reporting incidents of suspected or confirmed breaches of information concerning borrowers; (vi) establishing physical and technical perimeter security safeguards; (vii) utilizing antivirus and intrusion detection software; (viii) performing risk and controls assessments and mitigation, including production readiness reviews; (ix) establishing security event response teams; and (x) establishing technical and physical access controls, such as role-based access management and firewalls.

Loan servicers that participate in HAMP (i) have agreed in writing that the information they provide to Treasury or to its Financial Agents is accurate, and (ii) have submitted a ''click through'' agreement on a Web site requiring the loan servicer to provide accurate information in connection with using the Program Web site. In addition, the Treasury's Financial Agents will conduct loan servicer compliance reviews to validate data collection controls, procedures, and records.

RETENTION AND DISPOSAL:

Information is retained in the system on back-up tapes or in hard-copy form for seven years, except to the extent that either (i) the information is subject to a litigation hold or other legal retention obligation, in which case the data is retained as mandated by the relevant legal requirements, (ii) or the Treasury and its financial agents need the information to carry out the Program. Destruction is carried out by degaussing according to industry standards. Hard copy records are shredded and recycled.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Deputy Assistant Secretary, Fiscal Operations and Policy, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, to gain access to records maintained in this system, or to amend or correct information maintained in this system, must submit a written request to do so in accordance with the procedures set forth in 31 CFR Sec. Sec. 1.26–.27. Address such requests to: Director, Disclosure Services Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURE:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Information about mortgage borrowers contained in the system of records is obtained from loan servicers who participate in HAMP or developed by the Treasury and its Financial Agents in connection with HAMP. Information is not obtained directly from individual mortgage borrowers to whom the information pertains.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–25897 Filed 10–27–09; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of 6 individuals and 1 entity whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the 6 individuals and 1 entity identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on October 22, 2009.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On October 22, 2009, OFAC designated 6 individuals and 1 entity whose property and interests in property are blocked pursuant to section 805(b) of the Foreign Narcotics Kingpin Designation Act.

The list of additional designees is as follows:

Individuals

1. Leyva Escandon, Edgardo, Apt. 513, Calle Tampico, Colonia Cacho, Tijuana, Baja California, Mexico; DOB 17 Sep 1969; POB Tijuana, Baja California, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. LEEE690917HBCYSD02 (Mexico); (Individual) [SDNTK]

2. Abaroa Diaz, Victor Manuel, c/o Tienda Marina Abaroa, La Paz, Baja California Sur, Mexico; C. Antonio Navarro S/N, Col. Centro, La Paz, Baja California Sur 23000, Mexico; DOB 30 May 1955; POB La Paz, Baja California Sur, Mexico; Citizen Mexico; Nationality Mexico; R.F.C. AADV550530UQ0 (Mexico); C.U.R.P. AADV550530HBSBZC00 (Mexico); (Individual) [SDNTK]

3. Abaroa Preciado, Aristoteles (a.k.a. ABAROA PRECIADO, Aristoteles Alejandro); La Paz, Baja California Sur, Mexico; DOB 29 Sep 1981; POB La Paz, Baja California Sur, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. AAPA810929HBSBRR19 (Mexico); (Individual) [SDNTK]

4. Abaroa Preciado, Victor Hussein, C. Antonio Navarro S/N, La Paz, Baja California Sur 23000, Mexico; DOB 23 Jun 1978; POB La Paz, Baja California Sur, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. AAPV780623HBSBRC09 (Mexico); (Individual) [SDNTK]

5. Preciado Gamez, Elia Yolanda, La Paz, Baja California Sur, Mexico; DOB 25 Feb 1954; POB Ahome, Sinaloa, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. PEGE540225MSLRML03 (Mexico); (Individual) [SDNTK]

6. Abaroa Preciado, Rosa Yolanda Nabila, Ave. Mariano Abasolo S/N Barr, La Paz, Baja California Sur 23060, Mexico; DOB 19 May 1985; POB Baja California Sur, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. AAPR850519MBSBRS00 (Mexico); Passport 05070005312 (Mexico); (Individual) [SDNTK]

Entity

1. Tienda Marina Abaroa (A.K.A. Materiales Y Refacciones Abaroa; A.K.A. Abaroa Fox Marine); Abasolo S/N, Col. El Manglito, La Paz, Baja California Sur 23060, Mexico; Leona Vicario 1000 E/Alvaro Obregon, Benito Juarez, Cabo San Lucas, Baja California Sur 23469, Mexico; R.F.C. AADV55053OUQO (Mexico); (Entity) [SDNTK]

Dated: October 22, 2009.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

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Part II

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34 CFR Parts 601, 668, 674, et al.
Institutions and Lender Requirements Relating to Education Loans, Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program; Final Rule

DEPARTMENT OF EDUCATION

[Docket ID ED–2009–OPE–0003]

34 CFR Parts 601, 668, 674, 682, and 685

RIN 1840–AC95

Institutions and Lender Requirements Relating to Education Loans, Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary establishes new regulations regarding Institutions and Lender Requirements Relating to Education Loans, to implement requirements relating to education loans that were added to the Higher Education Act of 1965, as amended (HEA) by the Higher Education Opportunity Act of 2008 (HEOA). The Secretary also amends the regulations for Student Assistance General Provisions, the Federal Perkins Loan (Perkins Loan) Program, the Federal Family Education Loan (FFEL) Program, and the William D. Ford Federal Direct Loan (Direct Loan) Program to implement certain provisions of the HEA that involve school-based loan issues and that were affected by the statutory changes made to the HEA by the HEOA.

DATES: *Effective Date:* These regulations are effective July 1, 2010.

Implementation Date: The Secretary has determined, in accordance with section 482(c)(2)(A) of the HEA (20 U.S.C. 1089(c)(2)(A)), that institutions, lenders, guaranty agencies, or servicers may, at their discretion, choose to implement the following new and amended provisions(as appropriate):

Sections 601.11(a), (b), and (c), which describe the private education loan disclosures.

Section 601.12 describing the use of institution and lender name.

Section 601.21 describing the content of the code of conduct.

Section 601.40(a), which requires certain lender disclosures to borrowers.

Section 668.16(d)(2), which requires institutions to report on reimbursements received for certain service on advisory boards.

Section 668.42(a)(4), which requires institutions to describe for prospective and enrolled students the terms and conditions of the loans students receive under the FFEL, Direct Loan, and Perkins Loan programs.

Section 674.12(a) and (b), which increases undergraduate and graduate student annual and aggregate loan maximums in the Perkins Loan Program.

Section 674.33(d), which eliminates the requirement that a borrower make a ''written'' request in order to obtain a forbearance on his or her Perkins Loan, and that the institution confirm the terms of the forbearance by notice to the borrower and record the terms in the borrower's file.

Section 674.39(a)(2), which changes the number of consecutive on-time, monthly payments a borrower must make to successfully rehabilitate a defaulted Perkins Loan from 12 to 9.

Sections 674.42(b), 682.604(g), and 685.304(b), which modify the exit counseling provisions.

Sections 674.53, 674.57, 674.58, and 674.59, which expand the existing cancellation provisions for certain teachers, Head Start employees, law enforcement employees, and military personnel.

Sections 682.604 and 685.304, which modify the entrance counseling provisions.

For further information, *see* the section entitled *Implementation Date of These Regulations* in the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: For information related to Part 601—Institution and Lender Requirements Relating to Education Loans, Gail McLarnon or Brian Smith. Telephone: (202) 219–7048 or (202) 502–7551 or via the Internet at: *Gail.McLarnon@ed.gov* or *Brian.Smith@ed.gov.*

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For information related to Cohort Default Rates, John Kolotos. Telephone: (202) 502–7762 or via the Internet at *John.Kolotos@ed.gov.*

For information related to Perkins Loan Program Cancellation Provisions, Vanessa Freeman. Telephone: (202) 502–7523 or via the Internet at *Vanessa.Freeman@ed.gov.*

If you use a telecommunications device for the deaf, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

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SUPPLEMENTARY INFORMATION: On July 28, the Secretary published a notice of proposed rulemaking (NPRM) for the Institutions and Lender Requirements Relating to Education Loans, the Student Assistance General Provisions, and for the Perkins Loan, FFEL and Direct Loan Programs in the **Federal Register** (74 FR 37432).

In the preamble to the NPRM, the Secretary discussed on pages 37434 through 37457 the major regulations proposed in that document to implement the provisions of the HEOA, including the following:

- Amending §§ 668.181, 668.184, 668.185, 668.186, 668.187, 668.188, 668.190, 668.191, 668.192, 668.193, 668.196, 668.198, and adding new §§ 668.200, 668.201, 668.202, 668.203, 668.204, 668.205, 668.206, 668.207, 668.209, 668.210, 668.211, 668.212, 668.213, 668.214, 668.215, 668.216, and 668.217 to reflect an increase in the period used to calculate the cohort default rate (CDR) from 2 to 3 years effective for CDRs calculated for fiscal year 2009 and subsequent years, the requirement that an institution whose CDR is greater than or equal to 30 percent for any fiscal year establish a default prevention plan, and an increase from 25 to 30 percent in the threshold default that would render an institution ineligible to participate in the Pell, FFEL, and Direct Loan Programs (*see* section 435(a) and (m) of the HEA);
- Amending §§ 674.42(b), 682.604(g), and 685.304(b) to reflect the expansion of exit counseling requirements in the title IV, HEA loan programs (*see* section 485(b)(1)(A) of the HEA);
- Amending §§ 682.604 and 685.304 to reflect the expansion of entrance counseling requirements in the FFEL and Direct Loan Programs (*see* section 485(l) of the HEA);
- Amending § 668.14 to add to the conditions an institution must agree to in its program participation agreement with the Secretary of Education (the agreement between the institution and the Department that enables the institution to participate in the loan programs under Title IV of the HEA). These conditions include: (1) A requirement that an institution develop, publish, administer and enforce a code of conduct with respect to its FFEL Program activities (*see* section 487(a)(25) of the HEA); (2) a requirement that an institution compile, maintain and make available to students

and their families a list of its preferred lenders if it enters into any preferred lender arrangement (*see* section 487(a)(27) of the HEA); and (3) a requirement that an institution, upon the request of an applicant of a private education loan, provide the applicant with the private education loan certification form developed by the Secretary (*see* section 487(a)(28) of the HEA);

- Adding new §§ 601.2, 601.11, and 601.30 to reflect the requirements for education loan borrower disclosures by institutions of higher education, and institution affiliated organizations, including definitions (*see* sections 151 through 155, 487(a) and 487(h) of the HEA);
- Adding a new § 601.10 to add the borrower disclosures by covered institutions and institution-affiliated organizations that participate in a preferred lender arrangement (*see* section 153(c) of the HEA);
- Adding a new § 601.20 to add the reporting requirements for covered institutions and institution-affiliated organizations (*see* section 153(c)(2) of the HEA);
- Adding a new § 668.42 to add information dissemination requirements for prospective and enrolled students regarding the terms and conditions of title IV, HEA loans (*see* section 485(a) of the HEA);
- Adding a new § 668.16(d)(2) to reflect the disclosure to the Secretary of any reimbursements made to employees of an institution of higher education for service on advisory boards (*see* section 485(m) of the HEA); and
- Amending §§ 674.51, 674.53, 674.56, 674.57, 674.58, 674.59, and 674.61 to reflect the expansion of cancellation benefits for Perkins Loan borrowers, including cancellation benefits for teachers in an educational service agency; staff members in a pre-kindergarten or childcare program; attorneys employed in a Federal Public Defender Organization or Community Defender Organization; fire fighters, faculty members of a Tribal College or University, librarians with a master's degree employed in an elementary or secondary school or in a public library that serves one or more schools eligible for funding under title I of the Elementary and Secondary Education Act of 1965, as amended; and speech pathologists with a master's degree who work exclusively with title I-eligible schools (*see* section 465(a) of the HEA).

In addition to these changes, we have made a number of minor technical corrections and conforming changes. Changes that are statutory or that involve only minor technical corrections are generally not discussed in the *Analysis of Comments and Changes* section.

Waiver of Proposed Rulemaking for Additional Conforming Changes

These final regulations incorporate certain statutory changes made to the HEA by the HEOA that were not included on Team II's negotiating agenda. These changes are:

- Amending §§ 674.12(a) and (b) to increase undergraduate and graduate student annual and aggregate loan maximums in the Perkins Loan Program.
- Amending §§ 674.33(d) to eliminate the requirement that a borrower make a ''written'' request in order to obtain a forbearance on his or her Perkins Loan.
- Amending §§ 674.39(a) and (b) to change the number of consecutive on-time, monthly payments a borrower must make to successfully rehabilitate a defaulted Perkins Loan from 12 to 9.

Because these amendments implement changes to the HEA that were not negotiated, we do not discuss them in the *Analysis of Comments and Changes* section.

Under the Administrative Procedure Act (5 U.S.C. 553), the Department is generally required to publish a notice of proposed rulemaking and provide the public with an opportunity to comment on proposed regulations prior to issuing final regulations. In addition, all Department regulations for programs authorized under Title IV of the HEA are subject to the negotiated rulemaking requirements of section 492 of the HEA. However, both the APA and HEA provide for exemptions from these rulemaking requirements. The APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency for good cause finds that notice and comment are impracticable, unnecessary or contrary to the public interest. Similarly, section 492 of the HEA provides that the Secretary is not required to conduct negotiated rulemaking for Title IV, HEA program regulations if the Secretary determines that applying that requirement is impracticable, unnecessary or contrary to the public interest within the meaning of the HEA.

Although the regulations implementing the HEOA are subject to the APA's notice-and-comment and the HEA's negotiated rulemaking requirements, the Secretary determined that it was unnecessary to conduct negotiated rulemaking or notice-and-comment rulemaking on the changes needed in §§ 674.12, 674.33 and 674.39. These amendments simply modify the Department's regulations to reflect statutory changes made by the HEOA to paragraphs (a), (e), and (h) of section 464 of the HEA and these changes are already effective. The Secretary does not have discretion in whether or how to implement these changes. Accordingly, negotiated rulemaking and notice-and-comment rulemaking are unnecessary.

Implementation Date of These Regulations

Section 482(c) of the HEA requires that regulations affecting programs under title IV of the HEA be published in final form by November 1 prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier and the conditions under which the entity may implement the provisions early.

Consistent with the intent of this regulatory effort to strengthen and improve the administration of the title IV, HEA programs, the Secretary is using the authority granted him under section 482(c) of the HEA to designate the following new and amended provisions for early implementation, at the discretion of each institution, lender, guaranty agency, or servicer, as appropriate: §§ 601.11(a), (b), and (c), 601.12, 601.21, 601.40(a), 668.16(d)(2), 668.42(a)(4), 674.12(a) and (b), 674.33(d), 674.39(a)(2), 674.42(b), 674.53, 674.57, 674.58, 674.59, 682.604, and 685.304.

Analysis of Comments and Changes

Except as noted earlier in this document regarding the limited regulations implementing provisions of the HEOA, the regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under title IV of the HEA, the Secretary must obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on July 28, 2009, in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the

committee dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by August 27, 2009. More than 25 parties submitted comments, a number of which were substantially similar. An analysis of the comments and the changes in the regulations since publication of the NPRM follows.

We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we do not address minor, non-substantive changes, recommended changes that the law does not authorize the Secretary to make, or comments pertaining to operational processes. We also do not address comments pertaining to issues that were not within the scope of the NPRM.

PART 601—INSTITUTION AND LENDER REQUIREMENTS RELATING TO EDUCATION LOANS

Subpart A—General

Definitions (§ 601.2)

Comment: Several commenters recommended that we modify the definition of the term *preferred lender arrangement* in proposed § 601.2(b), based on final regulations published in the **Federal Register** by the Federal Reserve Board on August 14, 2009 (74 FR 41194). The Official Staff Interpretations included with the Federal Reserve's final regulations state that a lender is only required to comply with the preferred lender arrangement disclosure requirements in 12 CFR 226.48(f) if the lender is aware that it is a party to a preferred lender arrangement (74 FR 41236). In the commenters' view, this acknowledgement by the Federal Reserve Board that a lender may be in a preferred lender arrangement without realizing it means that a preferred lender arrangement does not exist unless both parties are aware of the arrangement. These commenters recommended that we revise our proposed definition of *preferred lender arrangement* to specify that a preferred lender arrangement can only arise when both the lender and the school are aware of the arrangement. These commenters argued that this change in the definition would align our regulations with the Official Staff Interpretations included with the Federal Reserve's final regulations.

Discussion: We disagree that there is a conflict between our definition of *preferred lender arrangement* and the statement in the Official Staff Interpretations included with the Federal Reserve's final regulations that a lender is only required to comply with the preferred lender arrangement disclosure requirements in 12 CFR 226.48(f) if the lender is aware that it is a party to a preferred lender arrangement.

The issue of whether a preferred lender arrangement exists if a lender is not aware that it is a party to the arrangement came up frequently during the negotiated rulemaking process. As we stated during negotiated rulemaking and in the preamble to the NPRM, a preferred lender arrangement exists if a lender provides or issues education loans to students (or the families of students) attending a covered institution and the covered institution or an institution-affiliated organization recommends, promotes, or endorses the education loan products of the lender. If both of these conditions are met, a preferred lender arrangement exists, whether or not the covered institution and the lender have entered into a formal agreement.

We agree with the Federal Reserve Board that it is possible for a lender to make loans to students at a covered institution and not be aware that the covered institution recommends, promotes, or endorses the education loan products of the lender. We do not view the Federal Reserve Board's position to be, however, that a preferred lender arrangement does not exist if the lender is not aware of the preferred lender arrangement. The Federal Reserve Board acknowledges that the arrangement exists, but states that the lender is not required to comply with the preferred lender arrangement disclosure requirements in 12 CFR 226.48(f) unless the lender is aware that it is a party to a preferred lender arrangement.

Changes: None.

Comment: Paragraph (3) of the definition of *preferred lender arrangement* specifies that a preferred lender arrangement does not exist with regard to private education loans made by a covered institution to its own students, if the private education loans meet the requirements in paragraphs (3)(i), (3)(ii), (3)(iii) and (3)(iv) of the *preferred lender arrangement* definition in proposed § 601.2(b). One commenter recommended that private education loans made by a foundation created to support a covered institution also should be exempted, if the loans meet the other criteria stipulated in the definition. The commenter defined ''foundations'' to include non-profit endowments, foundations, or other entities that are created to support a covered institution and its students. The commenter stated that these foundations are not lenders or lending institutions in the traditional sense, but they often make loans to students at covered institutions, funded by donor-directed contributions and other assets of the foundation.

This commenter also recommended that we amend paragraph (3)(iii) of the definition of *preferred lender arrangement* in proposed § 601.2(b) to exempt loans made through State aid programs available to in-state students. The commenter noted that such State aid loan programs may have a service requirement, resulting in no monetary payback if the borrower meets the service obligations.

Discussion: We agree with the comment relating to foundations, and note that the lead-in language to the definition of the term *preferred lender arrangement* in proposed § 601.2(b) refers to both covered institutions and institution-affiliated organizations. We believe that the exceptions specified in paragraph (3) of the *preferred lender arrangement* definition apply to private education loans provided or issued by institution-affiliated organizations, as well as private education loans provided or issued by covered institutions. The definition of the term *institution-affiliated organization* includes foundations and other entities of the type the commenter included under its definition of the term ''foundations''.

We also agree with the recommendation to include loans made to students from State-funded financial aid programs among the exceptions for Public Health Service Loans in paragraph (3)(iii) of the *preferred lender arrangement* definition in § 601.2(b), if the terms and conditions of the loans include a loan forgiveness option for public service. However, we have not limited this exemption to State-funded financial aid programs for in-state students, as the commenter suggested. We believe that these types of State-funded loans should be exempt from the *preferred lender arrangement* definition regardless of whether the loans are limited to in-state students.

Changes: We have revised paragraphs (3) and (3)(i) of the definition of the term *preferred lender arrangement* in § 601.2(b) to reference institution-affiliated organizations (not only covered institutions). We also have revised paragraph (3)(iv) of the definition to refer to State-funded financial aid programs.

Comment: One commenter requested clarification of the provision in the definition of *preferred lender*

arrangement that states that an arrangement or agreement does not exist if the private education loan provided or issued to a student attending a covered institution is made by the covered institution using its own funds. The commenter referred to language in the preamble of the NPRM stating that an institution would not be considered to be using its own funds if it borrowed money from a lender to make a private education loan to a student and then sold the loan to that lender shortly after making the loan, in effect acting as a pass-through for the lender's funds. While sharing the Department's concern that an institution may become a pass-through for a lender if the institution sells a private education loan back to the lender from which the institution received the initial funding, the commenter also worried that limitations placed on selling private education loans made by a covered institution would prevent schools from raising capital to make additional institutional loans. The commenter asked if an institution would be permitted to sell a private education loan to a different or unaffiliated lender that was not the source of the funds used to make the loan and still be considered to be using its own funds.

Discussion: The Department remains concerned about situations where a covered institution obtains funds from a lender to make private education loans to its students and then sells the loans back to that lender, or another unaffiliated lender, shortly after making the loan. As stated in the preamble to the NPRM, we believe that the covered institution is merely acting as a pass-through for the lender's funds in these situations. Exempting loans made under these conditions from the preferred lender arrangement requirements would create a loophole that covered institutions could use to avoid the preferred lender requirements. The Department also continues to believe that these arrangements may be deceptive to borrowers who believe they are receiving a private education loan from the covered institution only to find that, very shortly after the loan is made, the actual loan holder is another entity entirely.

The Department recognizes, however, that borrowing money or using a business line of credit from a lender is a common form of financing that enables a covered institution to meet its working capital needs and operating expenses. Rather than focus on the use of a line of credit or borrowed funds in defining an institution's own funds, the Department believes that it is more helpful to consider the totality of the circumstances around the extension of private education loans by a covered institution and what happens to these loans over a period of time. In that vein, the Department will consider a covered institution that makes a private education loan to be using its own funds if the loan is made using funds that include, but are not necessarily limited to, tuition and fee revenue, investment income, endowment funds, borrowed money or a line of credit, and the covered institution does not sell or collateralize the private education loan for two years from the date the loan is fully disbursed, nor does the covered institution engage in an arrangement tying the sale of a private education loan to a lender after the two year period has elapsed.

Changes: None.

Comment: The definition of *private education loan* in proposed § 601.2(b) corresponds to the definition of *private education loan* in section 140 of the Truth in Lending Act (TILA) (15 U.S.C. 1631). The definition of *private education loan* in 12 CFR 226.46(b)(5) of the Federal Reserve's final regulations is also based on the definition in section 140 of the TILA. However, through regulations, the Federal Reserve has interpreted the statutory term private education loan to include certain exemptions. Under 12 CFR 226.46(b)(5), an extension of credit provided by a covered educational institution is not a private education loan if the extension of credit is for a term of 90 days or less, or if the term of the extension of credit is one year or less and an interest rate will not be applied to the credit balance.

Several commenters recommended that we revise the definition of *private education loan* in § 601.2(b) by including these exemptions. One commenter noted that applying the private education loan disclosures to such short-term extensions of credit would not provide meaningful disclosures to students. Requiring such disclosure for short-term extensions of credit could lead schools to stop providing such extensions of credit, making it more difficult for students to benefit from the flexible payment options offered by these extensions of credit.

Discussion: We agree with the commenters. We also note that the Federal Reserve Board's interpretation of the definition of *private education loan,* as reflected in 12 CFR 226.46(b)(5), renders the proposed exception for loans made under an institutional payment plan in paragraph (3)(iv) of the definition of *preferred lender arrangement* in proposed § 601.2(b) superfluous.

Changes: We have revised the definition of *private education loan* in § 601.2(b) to exclude extensions of credit that meet the criteria specified by the Federal Reserve Board in 12 CFR 226.46(b)(5). We also have removed the reference to institutional payment plans in subparagraph (3)(iv) of the definition of *preferred lender arrangement.*

Subpart B—Loan Information To Be Disclosed by Covered Institutions and Institution-Affiliated Organizations

Preferred Lender Arrangement Disclosures (§ 601.10)

Comment: One commenter recommended that we modify proposed § 601.10(a)(1)(i), which requires a covered institution in a preferred lender arrangement to disclose the maximum amount of title IV grant and loan aid available to students in the informational materials that discuss education loans that the covered institution makes available. The commenter recommended that instead of referring to title IV grant aid that the regulations specify Pell Grant aid. The commenter also recommended that the regulations include a statement that the title IV information only address title IV aid available to students attending the school. The commenter stated that it would be misleading to students to mandate disclosure of information about all title IV grant and loan programs, since not all schools participate in all of the title IV grant and loan programs.

Discussion: The information required to be disclosed to students by covered institutions and institution-affiliated organizations is specified in section 152(a)(1)(i)(I) of the HEA. This section specifically refers to grant and loan aid under title IV of the HEA, not just Pell Grant aid. Limiting the information provided to Pell Grant aid would not be consistent with the HEA.

We agree with the commenter that the information provided in these materials should be specific to the covered institution. However, we do not agree that a change to § 601.10(a)(1)(i) is necessary. In our view, § 601.10(a)(1)(i), taken in context with the other regulatory provisions in § 601.10, clearly refers to title IV information specific to the covered institution.

The information specified in § 601.10(a)(1)(i) must be included in information materials that are provided to current or prospective students of the covered institution and must describe or discuss financial aid opportunities available to students (*see* § 601.10(b)). This information must be provided in a manner that allows a student to take the information into account before

selecting a lender or applying for an education loan (*see* § 601.10(c)(2)).

The information provided under this section is intended to help students make informed decisions when applying for student financial aid. Providing a student with information on title IV financial aid programs not available at the covered institution could be misleading to the student. In addition, for prospective students who have not made a final decision on which school to attend, we believe it would be more helpful for the student to be able to easily compare the title IV financial aid opportunities available at the different schools the student is considering.

Changes: None.

Comment: The preamble to the NPRM makes a reference to *Dear Colleague Letter GEN–08–06* (DCL GEN–08–06), which discusses the use of preferred lender lists in the FFEL Program. DCL GEN–08–06, which is available at *http://www.ifap.ed.gov/dpcletters/GEN0806.html,* states that a neutral, comprehensive list of lenders that have made loans to students at a school within a set period of time, such as three to five years, and that provides a clear statement that a borrower can choose to use any FFEL lender, is not considered a preferred lender list. DCL GEN–08–06 also states that the school may not provide any additional information about the lender on the list.

Commenters asked whether the guidance in DCL GEN–08–06 applies to a list of lenders who have made private education loans at a covered institution, as well as to a list of FFEL lenders.

Discussion: The guidance in DCL GEN–08–06 applies to a list of lenders who have made private education loans at a covered institution, as well as a list of FFEL lenders. During the negotiated rulemaking sessions, we stated that the list of lenders could also include a comparison of terms and conditions offered by the lenders on the loans being offered.

As noted in the NPRM, if a covered institution includes certain lenders on the list and leaves other lenders off the list, the Department views the covered institution as recommending, promoting, or endorsing the lenders on the list over the lenders that it has chosen to leave off the list regardless of whether the covered institution includes a disclaimer on the list, asserting that the covered institution does not recommend, promote, or endorse the lenders on its list. Unless the list is a neutral, comprehensive list of lenders who lent to students at the school, the list serves to recommend, promote, or endorse the lenders on the list, despite whatever disclaimers the school may attach to the list.

Changes: None.

Comment: One commenter noted that many institutions are no longer providing students and their families with a preferred lender list for private education loans. Instead, many institutions are referring borrowers to Web sites developed by third party entities that contain neutral lists of private education lenders and the loan products they offer. The commenter requested that the Department clarify its position on the use of these private education lender lists by institutions of higher education in helping students and their families explore their higher education financing options.

Discussion: The Department does not consider an institution that refers its students to a third party entity that maintains a comprehensive, neutral listing of private education lenders to be participating in a preferred lender arrangement as long as the institution ensures that the listing is broad in scope, does not endorse or recommend any of the lenders on the list and the lenders on the list do not pay the third party entity to be placed on the list or pay the third party entity a fee based on any loan volume generated. However, if an institution retains a third party entity to develop a customized lender list for the institution to provide to its students as a resource, either through a Request for Information or some other process, the Department does consider the institution to be participating in, and subject to the requirements of, a preferred lender arrangement under part 601.

Changes: None.

Comment: One commenter asked us to clarify whether a covered institution could be required to comply with the preferred lender arrangement disclosures if the covered institution does not have a preferred lender list. The commenter wanted to know if there are instances in which an institution would be considered to be recommending, promoting, or endorsing an education loan product in the absence of a preferred lender list. The commenter expressed concern that a covered institution might not realize that it is in a preferred lender arrangement, and therefore fail to comply with the preferred lender arrangement requirements.

Discussion: Any action that a covered institution takes to recommend, promote, or endorse the education loan products of a lender that provides or issues education loans to students attending the covered institution triggers the preferred lender arrangement requirements. The actions a covered institution may take to recommend, promote, or endorse the education loan products of a lender are not limited to including the lender on a preferred lender list.

If a covered institution is unsure whether it is in a preferred lender arrangement with a lender, the covered institution should review its policies and practices with regard to that lender. We do not believe that a covered institution would have difficulty determining whether or not the covered institution is recommending, promoting, or endorsing a lender's loan products, or whether or not the covered institution is complying with DCL GEN–08–06.

Moreover, the program participation agreement requirements in § 668.14(b)(28) require an institution that participates in a preferred lender arrangement to annually publish a list of lenders with which it has preferred lender arrangements. To comply with this requirement, an institution must routinely determine whether it is in a preferred lender arrangement with any lender that provides education loans to the institution's students.

Changes: None.

Private Education Loan Disclosures and Self-Certification Form (§ 601.11)

Comment: Several commenters stated that the requirement for a self-certification form should be confined to direct-to-consumer private education loans and that the self-certification form should not be required if an institution is already certifying the borrower's cost of attendance, estimated financial assistance, enrollment status and academic progress directly to the private education lender. These commenters stated that requiring an institution to provide an enrolled or admitted student applicant of a private education loan with the self-certification form and the information necessary to complete the form, in addition to the school certification to the private education lender, would delay the delivery of loan funds to students and families, result in conflicting information if the borrower changed the information on the form, and create a duplicative and unnecessary administrative burden on institutions.

Another commenter asked the Department to provide relief from the self-certification form requirements when:

- The borrower is an international student (non-citizen) and not eligible for title IV aid;
- The borrower has been determined not eligible for title IV aid; or

• The borrower has already received all of the title IV funds for which she is eligible.

This commenter further suggested that the Department exempt an institution of higher education that makes private education loans to its students from the requirement that it provide an applicant for the institutional loan with the self-certification form or, alternatively, to allow the institution to provide clarification to the prospective borrower on his or her eligibility for title IV aid.

Discussion: The Department understands that requiring an institution to provide the private self-certification form, and making available the information needed to complete the form, represents an increase in burden and may, in some cases, create duplicative processes. However, the statutory language in section 128(e)(3) of the TILA and sections 155 and 487(a)(28)(A) of the HEA is clear: The TILA requires private education lenders to obtain the self-certification form from all borrowers of private education loans, as that term is defined in the TILA, without exception. The HEA requires the form, and the information required to complete it, to be made available to the applicant by the relevant institution of higher education, in written or electronic form, upon request of the applicant, without exceptions, and conditions an institution's participation in any title IV, HEA program, on compliance with this requirement.

The Department, in negotiating rules implementing this provision in §§ 601.11(d) and 668.14(b)(29)(i), clarified that the institution must provide the form only to an enrolled or admitted student. We believe this clarification will help minimize the potential burden of this requirement.

Moreover, the Federal Reserve Board, in implementing section 128(e)(3) of the TILA provided some flexibility to private education lenders in obtaining the form that has an impact on an institution's responsibilities. The Federal Reserve Board, in 12 CFR 226.48, provides three ways for a private education lender to obtain the self-certification form: (1) The lender may receive the form directly from the consumer; (2) the lender may receive the form from the consumer through the institution of higher education; or (3) the lender may provide the form, and the information the consumer will require to complete the form, directly to the consumer.

While all three of these options require the institution to provide the form, and the information required to complete the form, to either the private loan applicant or the private education lender, the Department believes that options 2 and 3 may be less burdensome on the institution, especially if the institution has an existing relationship with the lender.

Although the Federal Reserve has built some flexibility into the process of obtaining the self-certification form for the lender, the Department emphasizes that an institution is not required to provide the form, or the information needed to complete the form, to anyone other than the borrower in order to comply with §§ 601.11(d) and 668.14(b)(29)(i). An institution may provide the form to the lender at its option.

Changes: None.

Subpart C—Responsibilities of Covered Institutions and Institution-Affiliated Organizations

Code of Conduct (§ 601.21)

Comment: The code of conduct provisions in § 601.21(c)(2)(i) prohibit employees of the financial aid office of a covered institution from soliciting or accepting gifts from a lender, guarantor, or loan servicer. However, as specified in § 601.21(c)(2)(iii)(D), entrance and exit counseling services provided to borrowers do not qualify as a gift, as long as the covered institution's staff are in control of the counseling and the counseling does not promote the products or services of a specific lender. One commenter recommended that the Department clarify the meaning of ''in control'' with respect to the counseling, and in a manner that minimizes the potential for conflicts of interest, particularly with regard to opportunities for lenders to build awareness of their brand through the counseling. This commenter also recommended that we modify § 601.21(c)(2)(iii)(D) to explicitly prohibit lender-provided personnel from providing the counseling, except in emergency situations as specified in § 601.21(c)(6)(iii)(D).

Discussion: The code of conduct requirements in § 601.21 track very closely the code of conduct requirements in section 487(e)(1) through 487(e)(7) of the HEA. The statutory provisions and corresponding provision in § 601.21(c)(6)(iii)(D) specifically allow a lender to provide entrance and exit counseling ''services to borrowers.'' We believe that it would be inconsistent with the statute to prohibit lender-provided personnel from providing these services. However, as the commenter points out, the covered institution's staff must be in control of the counseling.

To remain in control of the counseling, the covered institution has to review and approve the content of the counseling and provide oversight over how the counseling is conducted. Ultimately, the covered institution is responsible for the entrance and exit counseling that its borrowers receive. We believe this oversight by the covered institution will mitigate against lenders using the counseling to promote their products.

Changes: None.

Comment: One commenter believed that proposed § 601.21(c)(5)(i) goes beyond Congressional intent and may reduce the availability of private education loans to certain students. This section prohibits a covered institution from accepting any offer from a lender for funds to be used for private education loans, if the offer is made in exchange for the covered institution's providing concessions or promises to provide the lender a specified number of loans, a specified loan volume, or a preferred lender arrangement for FFEL loans or private education loans. The commenter noted that section 487(e)(5)(A)(i) of the HEA limits this provision to FFEL Loans. The commenter recommended that we remove the reference to private education loans from § 601.21(c)(5)(i)(A).

Discussion: The code of conduct requirements specified in section 487(e) of the HEA are from the section of the HEA that describes program participation agreements for institutions that participate in the title IV programs. Section 487(a)(25)(A)(ii) of the HEA specifies that the code of conduct shall, ''at a minimum,'' include the provisions described in section 487(e) of the HEA. Section 153(c)(3)(A) of the HEA requires covered institutions and institution-affiliated organizations that participate in preferred lender arrangements to comply with the code of conduct requirements in section 487(a)(25) of the HEA. Because covered institutions do not necessarily participate in the title IV programs, and preferred lender arrangements may relate to private non-title IV education loans as well as title IV education loans, we continue to believe that it is necessary to include private education loans in § 601.21(c)(5)(i)(A).

Changes: None.

Comment: The code of conduct provisions prohibit a covered institution from requesting or accepting any assistance with call center staffing or financial aid office staffing from a lender. However, § 601.21(c)(6)(ii) specifies that a covered institution may request or accept educational

counseling materials, financial literacy materials, or debt management materials from a lender, provided that the materials identify any lender that assisted in preparing or providing the materials. One commenter believed that the requirement to identify the lender on the materials could result in direct or indirect promotional opportunities for the lender. The commenter recommended that we prescribe the text and format of the language that identifies the lender on the materials. The commenter also recommended that we require the language identifying the lender to clearly state that the borrower is not expected or required to use the lender's products and has the right to obtain loans from a lender of the borrower's choice.

Discussion: We believe that it would be overly prescriptive for the Department to mandate the specific language and formatting used to identify the lender or lenders who developed the materials.

Changes: None.

Comment: While the code of conduct provisions generally prohibit a covered institution from requesting or accepting staffing assistance from a lender, § 601.21(c)(6)(iii) provides an exception for staffing assistance provided on a short-term, non-recurring basis to assist the covered institution with financial aid-related functions during emergencies.

One commenter stated that this provision conflicts with the prohibited inducement provisions in the Team I NPRM, published in the **Federal Register** on July 23, 2009 (74 FR 36556). Specifically, the commenter stated that § 682.200(b)(5)(i)(A)(*10*) prohibits lenders from offering to perform any function required under title IV for a school, other than exit counseling.

Discussion: Section 682.200(b)(5)(i)(A)(*10*) does not prohibit a lender from providing these services to a school in all circumstances. The prohibition only applies if a lender provides the services ''to secure applications for FFEL loans or to secure FFEL loan volume'' (*see* § 682.200(b)(5)(i)(A)). The Department assumes the necessary intent if we take action against a lender for providing such prohibited inducements, but the lender may demonstrate to the Department that such intent was not present, and there was no quid pro quo between the school and the lender. As long as there is no evidence that the lender was providing the services to increase the number or volume of loans, there would not be a prohibited inducement. Therefore, the provisions in § 682.200(b)(5)(i)(A)(*10*) and § 601.21(c)(6)(iii) do not conflict.

Changes: None.

Subpart E—Lender Responsibilities

Disclosure and Reporting Requirements for Lenders (§ 601.21)

Comment: One commenter noted that § 601.40(c) requires FFEL lenders to annually certify to the Secretary their compliance with the HEA if they are in a preferred lender arrangement with any school. The commenter noted that a lender could be in a preferred lender arrangement without being aware of it, and suggested that the requirement in § 601.40(c) only apply to lenders that know they are in a preferred lender arrangement.

Discussion: If a lender is providing or issuing education loans to students attending a covered institution, it is incumbent on the lender to determine whether or not the lender and the covered institution are in a preferred lender arrangement. Being unaware of its obligation to comply with the preferred lender arrangement requirements does not exempt a lender from its obligation to comply with the requirements.

Given the extensive reporting and disclosure requirements specified in part 601, we believe that it is extremely unlikely that a lender will be unaware when it is in a preferred lender arrangement with a covered institution.

Specifically, covered institutions are required to provide detailed information on private education loans offered pursuant to a preferred lender arrangement, as well as information on why the covered institution participates in a preferred lender arrangement with the lenders on its preferred lender list. The preferred lender list must disclose the method and criteria used by the covered institution to select lenders for inclusion on the list. Covered institutions are likely to contact lenders to determine if the lender meets the selection criteria established by the covered institution.

If the covered institution has not directly contacted the lender to obtain the information needed for its various disclosures and reports, a lender can quickly and easily determine whether it is in a preferred lender arrangement by accessing the covered institution's Web site. A covered institution that participates in a preferred lender arrangement must post on its Web site information on private education loans offered through the preferred lender arrangement, pursuant to § 601.10(a)(2)(i). The covered institution must also submit an annual report to the Department, which includes a detailed explanation of why the covered institution participates in the preferred lender arrangement. The covered institution must make the annual report available to the public, pursuant to § 601.20(b).

If a lender reviews all of this information and still cannot determine whether or not it is in a preferred lender arrangement with a covered institution, the lender can always contact the covered institution directly.

Enforcement actions taken by the Department against a lender for failing to comply with the preferred lender arrangement requirements will take into account the extent of the efforts made by the lender to determine whether it was in a preferred lender arrangement.

Changes: None.

Comment: Proposed § 601.40(d) requires lenders in a preferred lender arrangement to annually provide to the institution or institution-affiliated organization, and to the Secretary, information regarding the FFEL loans the lender will provide to students and families pursuant to the preferred lender arrangement for the next award year. One commenter recommended that a FFEL lender with a preferred lender arrangement with a covered institution or an institution-affiliated organization relating to FFEL loans must annually, or upon the request of the institution, provide such information as required.

Discussion: Proposed § 601.40(d) is consistent with the statutory requirements in section 153(b) of the HEA. Because the commenter provided no explanation or justification for the requested change, we have no basis for making the requested change.

Changes: None.

Code of Conduct (§ 668.14(b)(27))

Comment: One commenter requested that the Department clarify the applicability of the code of conduct requirements. The commenter asked under what circumstances § 601.21(a) applies and under what circumstances § 668.14(b)(27) applies.

Discussion: The HEOA added requirements for an institutional code of conduct in both section 153(c)(3) and section 487(a)(25) of the HEA. These changes are reflected in §§ 601.21(a) and 668.14(b)(27), respectively. The code of conduct requirements in § 601.21(a) apply to covered institutions and institution-affiliated organizations that have a preferred lender arrangement. A covered institution is any institution that receives Federal funding, including institutions that do not participate in the Title IV programs. The regulations in § 668.14(b)(27) require all institutions

to develop a code of conduct as a condition of program participation in any of the Title IV, HEA loan program.

Changes: None.

Private Education Loan Certification (§ 668.14(b)(29))

Comment: Several commenters noted that Congress enacted technical amendments to the HEA that changed the data that must be included on the private loan self-certification form. The commenters requested that corresponding changes be made to § 668.14(b)(29).

Discussion: The Higher Education Technical Corrections (Pub. L. 111–39) made technical amendments to the HEA that changed the information on the private loan self-certification form that an institution must provide to any enrolled student who requests it. Public Law 111–39 added a requirement to report amounts of estimated financial assistance used to replace the expected family contribution and removed the requirement to report the expected family contribution.

Changes: We revised § 668.14(b)(29) to reflect the changes made by Public Law 111–39 to the information to be reported to students on the private loan self-certification form.

Disclosures of Reimbursement for Service on Advisory Boards (§ 668.16(d)(2))

Comment: One commenter urged the Department to amend § 668.16(d)(2) by expanding the requirement to report to the Secretary any reasonable expenses paid or provided under section 140(d) of the TILA to all institutional officials with authority or influence on the selection of lenders.

Discussion: The HEOA amended section 485(m) of the HEA by adding, as a condition of participation in any title IV, HEA program, the requirement that the institution must annually report to the Secretary on any reasonable reimbursements paid or provided by a private education lender or group of lenders to any individual who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to education loans or other financial aid of the institution. The institution must report the amount of reasonable expenses paid or reimbursed, the name of the individual to whom the expenses were paid or provided, the dates of the activity for which the expenses were paid or provided, and must provide a brief description of the activity for which the expenses were paid or provided. While we believe that individuals who assist in or influence the selection of lenders would be included in the language as proposed, we agree that the recommended change is appropriate to highlight the HEOA's goal of transparency and accountability.

Changes: We have amended § 668.16(d)(2) to specifically reference, as an example of individuals who have responsibilities with respect to education loans, individuals with responsibilities for the selection of lenders.

Cohort Default Rates

Comment: A few commenters asked the Department to clarify the circumstances under which an institution's published cohort default rate would be recalculated as a result of an average rates appeal.

Discussion: Regarding the provision for publicly correcting rates as a result of average rate appeals, we note that average rate appeals under §§ 668.196(a)(1)(i) and 668.215(a)(1)(i) do not involve new rates, so the provision for correction is inapplicable. Average rate appeals under §§ 668.196(a)(1)(ii) and 668.215(a)(1)(ii) do not involve new rates either, but instead are a comparison of the average rate with the draft rate, as corrected by any timely adjustment, challenge or appeal. The regulations continue to provide that draft rates will be kept confidential. As a result, in the case of an average rates appeal, there is no corrected rate available for the Department to publish.

Changes: We have removed from §§ 668.196(c) and 668.215(c) the language stating that we will electronically correct the rate that is publicly released following a successful average rates appeal.

Comment: None.

Discussion: As part of our intradepartmental review of the cohort default rate regulations affected by the NPRM, we realized that proposed § 668.202(c) and current § 668.183(c), which identify the conditions and timeframes relating to when a borrower is considered to be in default on a loan, do not explicitly address uninsured loans held by the Department under the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA)(Pub. L. 110–227). As explained more fully in a notice published in the **Federal Register** on July 1, 2008 (73 FR 37422), under the ECASLA, the Secretary has authority to purchase, or enter into forward commitments to purchase, FFELP loans. Loans that the Department holds under this authority are not insured. The Department is responsible for servicing these uninsured FFELP loans.

The Department's CDR regulations need to identify when these uninsured FFELP loans that the Department holds are considered in default for CDR purposes. The date of default for CDR purposes for other FFELP loans is defined under § 668.183(c)(1)(i) and new § 668.202(c)(1)(i) as the date a claim for insurance is paid. Because the uninsured FFELP loans are indistinguishable from Direct Loan Program loans for CDR purposes, we have revised §§ 668.183(c) and 668.202(c) to follow the approach used in § 668.183(c)(1)(ii), concerning the date of default of Direct Loan Program loans, for defining the date of default of uninsured FFELP loans held by the Department.

Changes: We have revised §§ 668.183(c) and 668.202(c) to clarify that FFELP loans held by the Department under ECASLA are treated in the same way as Direct Loans with respect to determining when a borrower defaults.

Special Definitions (§ 674.51(b))

Comment: One commenter asked if there is a list of institutions that may be used as a reference when determining a borrower's eligibility for cancellation based on service as a full-time faculty member of a Tribal College or University, as that term is defined in section 316 of the HEA.

Discussion: The HEOA amended section 465(a)(2) of the HEA by adding a new public service cancellation category for borrowers in the Federal Perkins Loan program who are performing qualifying service as a full-time faculty member at a Tribal College or University, as that term is defined in section 316 of the HEA. We amended § 674.51(b) to reflect this change.

The Department provides a list of Tribal Colleges and Universities on its Web site at *http://www.ed.gov/about/inits/list/whtc/edlite-tclist.html#MN*. This list can be used as a resource when establishing a borrower's eligibility for cancellation under this provision.

Changes: None.

Teacher Cancellation (§ 674.53(e))

Comment: One commenter noted that proposed § 674.53(e) stated that a borrower is eligible for cancellation of a Perkins loan if she is a teacher in a designated public or other non-profit low-income elementary or secondary school or an educational service agency and the borrower is directly employed by the school system. The commenter further noted that, in the case of a borrower who is teaching in an educational service agency, the borrower may be working for many

school districts. The commenter asked the Department to clarify if a borrower in this situation would qualify for cancellation benefits under this provision.

Discussion: The HEOA amended section 465(a)(2)(A) of the HEA to expand cancellation benefits to a Perkins Loan borrower who is a teacher employed by an educational service agency, or who is a full-time special education teacher, including a teacher of infants, toddlers, children, or youth with disabilities, who is working in a system administered by an educational service agency. We amended § 674.53(a) to reflect this statutory change.

With regard to a borrower who is employed by an educational service agency, we consider the borrower to be employed by the school system and to qualify for cancellation benefits regardless of the number of school districts in which the borrower works. A more detailed discussion of educational service agencies is contained in the Department's final regulations implementing the lender and guaranty agency provisions (RIN 1840–AC98) [Docket ID ED–2009–OPE—0004].

Changes: None.

Cancellation for Law Enforcement or Corrections Officer Service (§ 674.57)

Comment: One commenter asked the Department to clarify how to determine if Community Defender Organizations and Federal Public Defender Organizations are established in accordance with section 3006A(g)(2)(B) and 3006A(g)(2)(A) of the Criminal Justice Act, respectively, when establishing a borrower's eligibility for cancellation based on her service as a full-time attorney employed in a defender organization.

Discussion: The HEOA amended section 465(a)(2)(F) of the HEA to extend cancellation benefits to borrowers who are employed full-time as an attorney in Federal Public Defender Organizations or Community Defender Organizations established in accordance with section 3006A(g)(2) of the Criminal Justice Act. We amended § 674.57 of the Perkins Loan Program regulations to reflect this change.

Pursuant to the Criminal Justice Act, the Office of Defender Services of the Administrative Office of the U.S. Courts provides information on its Web site that lists these Community Defender and Federal Public Defender Organizations. The Directory can be found at the following address: *http://www.fd.org/pdf_lib/defenderdir8_17_09.pdf.*

This Directory is updated daily. Although this is not a Web site that is administered by the Department of Education, the directory provided on this site may assist in determining a borrower's eligibility for cancellation under this provision. Additional guidance on this cancellation benefit will be provided in the Department's Federal Student Aid Handbook.

Changes: None.

Cancellation for Military Service (§ 674.59)

Comment: One commenter asked the Department to clarify the percentage rate of cancellation for a borrower in her third year of qualifying military service under the newly authorized military service cancellation rates if the borrower had previously received two years of cancellation at the previously authorized cancellation rate of 12½ percent.

Discussion: The HEOA amended section 465(a)(3)(A) of the HEA to allow borrowers who are serving in areas of hostility to receive a cancellation of up to 100 percent of the loan for each full year of qualifying active duty service effective on August 14, 2008, in the following increments: 15 percent for the first and second years of service; 20 percent for the third and fourth years of service; and 30 percent for the fifth year of service. Previously, the percentage of a loan canceled for qualifying military service could not exceed a total of 50 percent of the loan at a rate of 12½ percent per year. We amended § 674.59 to reflect these changes.

To clarify, a borrower who has received a military service cancellation for two years under the previously authorized cancellation rate of 12.5 percent, and who now qualifies for a third year of military service under the new cancellation rates, would qualify at the third-year 20 percent cancellation rate for the third year of eligible military service.

Changes: None.

Entrance Counseling

Counseling Borrowers (§§ 682.604 and 685.304)

Comment: One commenter recommended that the Department add disclosures to the entrance counseling provisions alerting students to some of the negative aspects of private student loans and the availability of parent PLUS loans. The commenter also recommended that the Department provide guidance to schools about the format, presentation, and timing of the information so that it is more useful to borrowers.

Discussion: We believe that the Truth-in-Lending Act disclosures private education lenders are required to provide to borrowers of a private education loan, which include a disclosure about the availability of Federal student aid, adequately address the information a borrower needs to know before borrowing a private education loan.

Changes: None.

Exit Counseling

Counseling Borrowers (§§ 674.42(b), 682.604(g) and 685.304(b))

Comment: One commenter encouraged the Department to add information about the eligibility criteria for the Income-Based Repayment and Public Service Loan Forgiveness Programs to exit counseling provisions.

Discussion: The exit counseling provisions in §§ 682.604(g)(2)(ii) and 685.304(b)(4)(ii) require that the features of all the available repayment plans be reviewed for the borrower. The exit counseling provisions in §§ 682.604(g)(2)(viii)(A) and 685.304(b)(4)(ix)(A) require that a general description of the terms and conditions under which a borrower may obtain full or partial forgiveness or discharge of a loan be reviewed for the borrower. The Department considers the eligibility criteria for an income-based repayment plan and for public service loan forgiveness to be covered under these requirements.

Changes: None.

Executive Order 12866

1. *Regulatory Impact Analysis*

Under Executive Order 12866, the Secretary must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the

President's priorities, or the principles set forth in the Executive order.

Pursuant to the terms of the Executive order, it has been determined that this regulatory action will not have an annual effect on the economy of more than $100 million. Therefore, this action is not ''economically significant'' and subject to OMB review under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, the Secretary has assessed the potential costs and benefits of this regulatory action and has determined that the benefits justify the costs.

Need for Federal Regulatory Action

As discussed in the NPRM, these regulations are needed to implement provisions of the HEA, as amended by the HEOA, particularly related to the new part E to the HEA, *Lender and Institution Requirements Relating to Education Loans,* which establishes extensive new disclosure requirements for lenders and institutions participating in Federal and private student loan programs. These regulations also implement significant changes made by the HEOA to provisions related to institutional cohort default rates and Perkins Loan cancellations.

Regulatory Alternatives Considered

Regulatory alternatives were considered as part of the rulemaking process. These alternatives were reviewed in detail in the preamble to the NPRM under both the *Regulatory Impact Analysis* and the *Reasons* sections accompanying the discussion to each proposed regulatory provision. To the extent that they were addressed in response to comments received on the NPRM, alternatives are also considered elsewhere in this preamble to the final regulations under the *Discussions* sections related to each provision. No comments were received related to the *Regulatory Impact Analysis* discussion of these alternatives.

As discussed in the *Analysis of Comments and Changes* section of this preamble, these final regulations restate specific HEOA requirements, in many cases using language drawn directly from the statute, language for which consensus was reached through negotiated rulemaking, and minor revisions in response to public comments. In most cases, these revisions were technical in nature and intended to address drafting issues or to provide additional clarity. None of these changes result in revisions to cost estimates prepared for and discussed in the *Regulatory Impact Analysis* of the NPRM.

Benefits

As discussed in the NPRM, benefits provided in these regulations include greater transparency for borrowers participating in the Federal and private student loan programs, clearer guidelines on acceptable behavior by and relationships among institutions participating in the student loan programs, and expanded eligibility for Perkins Loan cancellation benefits. It is difficult to quantify benefits related to the new institutional and lender requirements, as there is little specific data available on either the extent of improper or questionable relationships between institutions and lenders prior to the enactment of the HEOA or of the harm such relationships actually caused for borrowers, institutions, or the Federal taxpayer. In the NPRM, the Department requested comments or data that would support a more rigorous analysis of the impact of these provisions. No comments or additional data were received.

Benefits under these regulations flow directly from statutory changes included in the HEOA; they are not materially affected by discretionary choices exercised by the Department in developing these regulations, or by changes made in response to comments on the NPRM. As noted in the *Regulatory Impact Analysis* in the NPRM, these proposed provisions result in net costs to the Federal Government of $71.953 million over 2009–2013.

Costs

As discussed extensively in the *Regulatory Impact Analysis* of the NPRM, many of the statutory provisions implemented though these regulations will require regulated entities to develop new disclosures and other materials, as well as accompanying dissemination processes. In total, these changes are estimated to increase burden on entities or individuals participating in the student loan programs by 4,636,495 hours. Of this increased burden, 292 hours are associated with lenders and 1,195,769 hours with institutions. An additional 3,440,434 hours—or 74.2 percent of the total burden associated with the proposed regulations—are associated with borrowers. The monetized cost of this additional burden, using loaded wage data developed by the Bureau of Labor Statistics, is $78.5 million, of which $56.3 million is associated with borrowers and $22.2 million with schools. Lender costs are de minimus because of the small number of hours associated with those entities.

Given the limited availability of data underlying these burden estimates, in the NPRM the Department requested comments and supporting information for use in developing more robust estimates. In particular, we asked institutions to provide detailed data on actual staffing and system costs associated with implementing these regulations. No comments or additional data were provided.

Net Budget Impacts

HEOA provisions implemented by these regulations are estimated to have a net budget impact of $12.408 million in 2009 and $71.953 million over FY 2009–2013. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. (A cohort reflects all loans originated in a given fiscal year.)

The budgetary impact of these regulations is largely driven by changes to Perkins loan cancellations for military service. The Department estimates no budgetary impact for other provisions included in these regulations. There is no data indicating that the extensive new requirements for disclosures and codes of conduct for student loan program participants will have any impact on the volume or composition of Federal student loans.

Assumptions, Limitations, and Data sources

As noted in the NPRM, because these regulations largely restate statutory requirements that would be self-implementing in the absence of regulatory action, impact estimates provided in the preceding section reflect a pre-statutory baseline in which the HEOA changes implemented in these regulations do not exist. Costs have been quantified for five years. In developing these estimates, a wide range of data sources were used, including data from the National Student Loan Data System; operational and financial data from Department of Education systems, including especially the Fiscal Operations Report and Application to Participate (FISAP); and data from a range of surveys conducted by the National Center for Education Statistics such as the 2004 National Postsecondary Student Aid Survey, the 1994 National Education Longitudinal Study, and the 1996 Beginning Postsecondary Student Survey. Data from other sources, such as the U.S. Census Bureau, were also used. Elsewhere in this **SUPPLEMENTARY**

INFORMATION section we identify and explain burdens specifically associated with information collection requirements. *See* the heading *Paperwork Reduction Act of 1995.*

Accounting Statement

In Table 2 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these regulations. Expenditures are classified as transfers from the Federal government to student loan borrowers (for expanded Perkins loan cancellations).

TABLE 2—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Transfers
Annualized Monetized Transfers	$90.731.
From Whom To Whom?	Federal Government To Student Loan Borrowers.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations will affect institutions of higher education, lenders, and guaranty agencies that participate in Title IV, HEA programs and individual students and loan borrowers. The U.S. Small Business Administration Size Standards define institutions and lenders as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by small governmental jurisdictions, which are comprised of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.

As discussed in more detail in the *Regulatory Flexibility Act* section of the NPRM, data from the Integrated Postsecondary Education Data System (IPEDS) indicate that roughly 1,200 institutions participating in the FFEL program meet the definition of ''small entities.'' More than half of these institutions are short-term, for-profit schools focusing on vocational training. Other affected small institutions include small community colleges and Tribally controlled schools. Burden on institutions associated with these regulations is largely associated with the requirements to provide students with new disclosures related to preferred lender lists, private loan TILA requirements, and other new borrower rights and responsibilities. In many cases, these requirements only require one-time changes to existing entrance and exit counseling materials and should not represent significant new burden. (The Department estimates these changes generally require three hours or less to implement.) For other requirements, such as those affecting schools choosing to maintain a preferred lender list, the Department is providing model disclosure forms, the adoption of which should minimize institutional burden. In addition, the regulations allow schools to avoid the burdens associated with maintaining preferred lender lists with at least three lenders by simply providing students with a list of all lenders who have provided loans at the schools in the past. Accordingly, the Department believes the new requirements reflected in these regulations do not impose significant new costs on these institutions.

The Department believes few if any lenders participating in the FFEL program have revenues of less than $5 million. FFEL program activity is highly concentrated among the largest lenders; should an extremely small number of lenders that meet the threshold participate in the program, they likely are making loans as a service to current clients rather than soliciting new business. This type of lender, with a tangential relationship to Federal and private student loans, is highly unlikely to incur significant new compliance costs as a result of these regulations. Accordingly, the Department has determined that these regulations do not represent a significant burden on small lenders.

Guaranty agencies are State and private nonprofit entities that act as agents of the Federal government, and as such are not considered ''small entities'' under the Regulatory Flexibility Act. The impact of the regulations on individuals is not subject to the Regulatory Flexibility Act.

In the NPRM, the Secretary invited comments from small institutions and lenders as to whether they believe the proposed changes would have a significant economic impact on them and requested evidence to support that belief. No comments were received.

Paperwork Reduction Act of 1995

Final §§ 601.10, 601.11, 601.20, 601.21, 601.30, 601.40, 668.16, 668.181, 668.186, 668.190, 668.191, 668.200, 668.202, 668.209, 668.210, 668.211, 668.212, 668.213, 668.214, 668.217, 674.42, 674.53, 674.57, 674.58, 674.56, 674.59, 682.604, and 685.304 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Section 601.10—Preferred Lender Arrangement Disclosures

Final § 601.10(a) requires that a covered institution, or an institution-affiliated organization of a covered institution, that participates in a preferred lender arrangement disclose the maximum amount of Federal grant and loan aid under Title IV of the HEA available to students; the information identified on the model disclosure form developed by the Secretary for each type of education loan that is offered pursuant to a preferred lender arrangement; and a statement that the institution is required to process the documents required to obtain a loan under the FFEL Program from any eligible lender the student selects.

Final § 601.10(a)(2) requires a covered institution, or an institution-affiliated organization of a covered institution, to provide the disclosures required under section 128(e)(11) of the Truth in Lending Act (TILA) for each type of private education loan offered pursuant to a preferred lender arrangement.

Final § 601.10(c) requires a covered institution and institution-affiliated organization that participate in a preferred lender arrangement to provide the disclosure of the maximum amount of Federal grant and loan aid available to students, the information identified on a model disclosure form developed by the Department, as well as a statement indicating to students and parents that the institution is required to process the documents required to obtain a FFEL loan from any eligible lender the student selects. This information needs to be provided to students attending the covered institution, or the families of such students, as applicable. The information needs to be provided annually and in a manner that allows for the students or their families to take the information into account before selecting a lender or applying for an education loan.

Final § 601.10(d) requires that if a covered institution compiles, maintains, and makes available a preferred lender list, the institution must clearly and fully disclose on the preferred lender list why the institution participates in a preferred lender arrangement with each lender on the preferred lender list, particularly with respect to terms and

conditions or provisions favorable to the borrower; and that the students attending the institution, or the families of such students, do not have to borrow from a lender on the preferred lender list.

Final § 601.10(d)(1)(ii) requires that the preferred lender list must specifically indicate, for each listed lender, whether the lender is or is not an affiliate of another lender on the preferred lender list; and if a lender is an affiliate of another lender on the preferred lender list, must describe the details of such affiliation.

Final § 601.10(d)(2) requires the covered institution to ensure, through the use of the list of lender affiliates provided by the Secretary, that there are not less than three FFEL lenders that are not affiliates of each other included on the preferred lender list and, if the institution recommends, promotes, or endorses private education loans, that there are not less than two lenders of private education loans that are not affiliates of each other included on the preferred lender list.

Final § 601.10(d)(3) requires that the preferred lender list prominently disclose the method and criteria used by the institution in selecting lenders with which to participate in preferred lender arrangements to ensure that such lenders are selected on the basis of the best interests of the borrowers. These criteria include payment of origination or other fees on behalf of the borrower; highly competitive interest rates, or other terms and conditions or provisions of Title IV, HEA program loans or private education loans; high-quality servicing; or additional benefits beyond the standard terms and conditions or provisions for such loans.

Final § 601.10(d)(4)(ii) requires that the covered institution exercise a duty of care and a duty of loyalty to compile the preferred lender list without prejudice and for the sole benefit of the students attending the institution, or the families of such students.

Final § 601.10(d)(5) requires a covered institution to not deny or otherwise impede the borrower's choice of a lender or cause unnecessary delay in certification of a Title IV loan for those borrowers who choose a lender that is not included on the preferred lender list.

These final regulations represent an increase in burden. The affected entities under the final regulations are borrowers, and institutions and their institutionally-affiliated organizations. We estimate that the burden for borrowers will increase by 323,103 hours and the burden for institutions and institutionally-affiliated organizations will increase by 12,078 hours, respectively, and we will include the total burden of 335,181 hours in OMB Control Number 1845–XXXA.

Section 601.11—Private Education Loan Disclosures and Self-Certification Form

Final § 601.11(a) requires a covered institution, or an institution-affiliated organization of a covered institution, to provide to a prospective borrower private education loan disclosures. The private education loan disclosures need to provide the prospective borrower with the information required under section 128(e)(1) of the TILA; and need to inform the prospective borrower that he or she may qualify for loans or other assistance under Title IV of the HEA; and that the terms and conditions of Title IV, HEA program loans may be more favorable than the provisions of private education loans.

Final § 601.11(c) requires the covered institution or institution-affiliated organization to ensure that information regarding private education loans is presented in such a manner as to be distinct from information regarding Title IV, HEA program loans.

Final § 601.11(d) requires that, upon an enrolled or admitted student applicant's request for a private education loan self-certification form, an institution must provide to the applicant, in written or electronic form, the self-certification form for private education loans developed by the Secretary to satisfy the requirements of section 128(e)(3) of the TILA. The institution also needs to provide the information required to complete the form, if the institution possesses that information.

These final regulations represent an increase in burden. The entities affected under these regulations are borrowers, and institutions and institutionally-affiliated organizations. We estimate that burden to borrowers will increase by 833,400 hours and the burden to institutions and institutionally-affiliated organizations respectively will increase by 1,107,115 hours and we will include the total burden of 1,940,515 hours in OMB Control Number 1845–XXXA.

Section 601.20—Annual Report Due From Covered Institutions and Institution-Affiliated Organizations

Final § 601.20(a) requires a covered institution, and an institution-affiliated organization, that participates in a preferred lender arrangement to prepare and submit to the Secretary an annual report, by a date determined by the Secretary. The annual report includes, for each lender that participates in a preferred lender arrangement with the covered institution or organization, the information about preferred lenders arrangements that must also be described for students and parents; and a detailed explanation of why the covered institution or institution-affiliated organization participates in a preferred lender arrangement with the lender. The explanation needs to include an explanation of why the terms, conditions, and provisions of each type of education loan provided pursuant to the preferred lender arrangement are beneficial for students attending the institution, or the families of such students, as applicable.

Final § 601.20(b) requires a covered institution or institution affiliated organization to ensure that the annual report is made available to the public and provided to students attending or planning to attend the covered institution and the families of such students.

These final regulations represent an increase in burden. The affected entities under the final regulations are institutions and institutionally-affiliated organizations. We estimate that burden for institutions and institutionally-affiliated organizations will increase by 336 hours in OMB Control Number 1845–XXXA.

Section 601.21—Code of Conduct

Final § 601.21 requires a covered institution that participates in a preferred lender arrangement to develop a code of conduct with respect to FFEL Program loans and private education loans with which the institution's agents must comply to prohibit a conflict of interest with the responsibilities of an agent of an institution with respect to FFEL Program loans and private education loans.

Final § 601.21(a)(2)(ii) and (iii) requires the institution to publish the code of conduct prominently on the institution's Web site; and administer and enforce the code by, at a minimum, requiring that all of the institution's agents with responsibilities with respect to FFEL Program loans or private education loans be annually informed of the provisions of the code of conduct.

Final § 601.21(b)(1) and (b)(2) requires any institution-affiliated organization of a covered institution that participates in a preferred lender arrangement to comply with the code of conduct developed and published by the covered institution and, if the institution-affiliated organization has a Web site, publish the code of conduct prominently on the Web site.

Under final § 601.21(b)(3), the institution-affiliated organization is

required to administer and enforce the code of conduct by, at a minimum, requiring that all of the institution-affiliated organization's agents with responsibilities with respect to FFEL Program loans or private education loans be annually informed of the provisions of the code of conduct.

The code of conduct applies to agents of an institution who are employees of the financial aid office of the institution or who have responsibilities with respect to FFEL Program loans or private education loans.

Final § 601.21(c) prescribes the minimum requirements of a covered institution's code of conduct. An institution's code of conduct must prohibit: revenue-sharing arrangements with any lender; soliciting or accepting gifts from a lender, guarantor, or servicer; accepting any fee, payment, or other financial benefit as compensation for any type of consulting or any contractual relationship with a lender; assigning a first-time borrower's loan to a particular lender or refusing to certify, or delaying certification of, any loan based on a borrower's selection of a particular lender; requesting offers of funds for private education loans, including opportunity pool loans, from a lender in exchange for providing the lender with a specified number or loan volume of FFEL Program loans or private education loans or a preferred lender arrangement; requesting or accepting staffing assistance from a lender; and receipt of compensation for serving on an advisory board, commission, or group established by a lender, guarantor, or group of lenders or guarantors.

Final § 601.21(c)(6) provides exceptions to the ban on staffing assistance, such as staffing assistance related to professional development or training; providing educational counseling materials; or providing short-term, nonrecurring staffing assistance during disasters or emergencies.

These final regulations represent an increase in burden. The affected entities under these regulations are institutions and institutionally-affiliated organizations. We estimate that burden for institutions and institutionally-affiliated organizations, respectively, will increase to 4,697 in OMB Control Number 1845–XXXA.

Section 601.30—Duties of Institutions Participating in the William D. Ford Direct Loan Program

Final § 601.30 requires a covered institution participating in the William D. Ford Direct Loan Program to make the information identified in a model disclosure form developed by the Secretary available to students attending or planning to attend the institution, or the families of such students. If the institution provides information regarding a private education loan to a prospective borrower, the institution must concurrently provide the borrower with the information identified on the model disclosure form.

Final § 601.30(b) allows a covered institution to use a comparable form designed by the institution to provide this information, instead of the model disclosure form.

These final regulations represent an increase in burden. The affected entities under the regulations are borrowers, and institutions and their institutionally-affiliated organizations. We estimate that burden to borrowers will increase by 56,671 hours and 1,353 hours for institutions and institutionally-affiliated organizations, respectively, and we will include the total burden of 58,024 hours in OMB Control Number 1845–XXXB.

Section 601.40—Lender Responsibilities

Final § 601.40(a) requires FFEL lenders to provide FFEL borrowers the disclosures required under current § 682.205(a) and (b). A lender offering private education loans is required to comply with the disclosures required under section 128(e) of the TILA for each type of private loan.

Final § 601.40(b) sets forth the information the lenders will have to provide to the Secretary on an annual basis regarding any reasonable expenses paid or provided to any agent of a covered institution who is employed in the financial aid office or has responsibilities with respect to education loans or other financial aid of the institution for service by the employee on an advisory board, commission or group established by a lender or a group of lenders. This information also needs to be reported for expenses paid or provided to any agent of an institution-affiliated organization involved in recommending, promoting or endorsing education loans. Lenders are required to report the amount of the expenses paid and the specific instances for which it was paid; the names of the agents to whom expenses were paid; and the date and description of each activity for which expenses were paid. This section of the regulations also requires the lender to submit a certification of compliance to the Secretary.

Final § 601.40(c) requires any FFEL lender participating in one or more preferred lender arrangements to annually certify to the Secretary its compliance with the HEA. Lenders required to file an audit under § 682.305(c) will be required to include the certification as part of the audit. A lender that is not required to submit an audit will need to provide the certification separately.

Final § 601.40(d) requires FFEL lenders with a preferred lender arrangement with a covered institution or an institution-affiliated organization to annually provide to the institution, institution-affiliated organization and the Secretary information regarding the FFEL loans the lender will provide to students and families pursuant to the preferred lender arrangement for the next award year. The information will be prescribed by the Secretary, after consultation with the Federal Reserve.

These final regulations represent an increase in burden. The affected entities under the regulations are borrowers and lenders. The estimated burden hours in the NPRM were inaccurate, and the correct estimates follow. We estimate that burden to borrowers will increase by 293,357 hours and that burden for lenders will increase by 623,675 hours and we will include the total burden of 917,032 in OMB Control Number 1845–XXXA.

Sections 668.181, 668.200, and 668.202—Three Year Cohort Default Rates

The final regulations reflected in new subpart N of part 668 incorporate the three-year cohort default method under final § 668.202. With regard to the transition period for use of the current cohort default rate method, final §§ 668.181 and 668.200(b) specify that the Department will issue annually two sets of draft and official cohort default rates for fiscal years 2009, 2010, and 2011.

These final regulations describe the purpose of the 3-year rate and explain the calculation and application of the 3-year cohort default rate. As a result, the statement of purpose of this subpart and the description of how the Department will calculate and apply the 3-year cohort default rate will not impact the burden in OMB 1845–0022.

Section 668.16—Administrative Capabilities and Cohort Default Rate Appeals

Final § 668.16(m)(1)(ii) applies the current rules for administrative capability based on two-year cohort default rates during the transition period. Thereafter, a school will be administratively capable if two of its three most recent three-year rates are less than 30 percent. Under final § 668.16(m)(2), the current rules for provisional certification based on two

year cohort default rates of 25 percent or more but less than 40 percent continues to apply during the transition period. Thereafter, an institution whose three year default rates are 30 percent or more, but less than 40 percent, for two years would not be provisionally certified based solely on its default rates under the following circumstances:

(1) The institution files timely a request for adjustment or appeal from the second such rate under final §§ 668.209 (Uncorrected data adjustments), 668.210 (New data adjustments), or 668.212 (Loan servicing appeals) and the request or appeal is pending or succeeds in reducing the institution's three-year rate below 30 percent.

(2) The institution files timely an appeal under final § 668.213 (Economically disadvantaged appeals) from the second such rate and the appeal is pending or successful. Final § 668.213 provides that the two rates of 30 percent or more must be successive to permit the appeal.

(3) The institution files a timely participation rate index appeal under final § 668.214 and the appeal is pending or successful.

(4) The institution had 30 or fewer borrowers in the three most recent cohorts of borrowers used to calculate the institution's rates.

(5) A three year rate that would otherwise potentially subject the institution to provisional certification was calculated as an average rate.

To avoid provisional certification by invoking exceptions (1), (2) or (3), the institution is required to file a request for adjustment or appeal in response to a notice from the Department that the institution's second three-year cohort default rate, or second successive three-year default rate for an economically disadvantaged appeal, is 30 percent or more, but less than 40 percent.

Under final § 668.214, a participation rate index appeal is taken from a loss of eligibility, or potential placement on provisional certification, based on three-year cohort default rates if the participation rate index for any of the excessive rates was .0625 or less. The appeal is taken within 30 days of receiving the notice of loss of eligibility with the most recent excessive official rate.

In addition, under final § 668.204(c)(1)(iii), an institution is allowed to challenge a potential placement on provisional certification because its three-year cohort default rates for two of the most recent three years would be 30 percent or more, but less than 40 percent, even though the second such rate was available only as a draft rate, if its participation rate index was equal to or less than 0.0625 for either its draft rate, or its most recent official rate equaling or exceeding 30 percent but less than 40 percent. The challenge is taken following notice to the school of its draft rate.

The final changes in § 668.16 apply the current rules on administrative capability during the transition period. We estimate that these regulations will not impact burden in OMB 1845–0022.

Sections 668.186, 668.190, 668.191, 668.209, 668.210, 668.211, and 668.212—Electronic Processes

Final § 668.186 eliminates the need to request a loan record detail report by providing that the report will be sent electronically to the institution as part of a package notifying the institution of its official cohort default rate. The institution will have five business days, from the transmission date of the package as posted on the Department's Web site, to report any problem with receiving that transmission. If the institution reports a problem within the five-day period, and the Department agrees that the institution did not cause the problem, we will extend the adjustment, challenge, and appeal deadlines and timeframes to account for retransmitting the package after the problem is resolved. If no problems are reported by the institution, the timeframe associated with filing or requesting the adjustment, challenge, or appeal begins on the sixth day following the transmission date of the package that is posted on the Department's Web site. The timeframes for the adjustments, challenges, and appeals are reflected in final §§ 668.190(b) and 668.191(b).

The subpart M, part 668 provisions reflected in § 668.186, and the provisions for adjustments, challenges, and appeals in the related sections in subpart M of part 668 are also reflected in the following parallel provisions in subpart N, part 668: §§ 668.209, 668.210, 668.211, and 668.212.

These final regulations represent a decrease in burden. The affected entities under these regulations are institutions. We estimate that burden will decrease by 725 hours for institutions and this decrease in burden will be reflected in OMB Control Number 1845–0022.

Sections 682.604 and 685.304—Entrance Counseling

Final § 682.604(f)(3) requires that institutions provide initial counseling for Stafford and graduate or professional student PLUS Loan borrowers. Comprehensive information on the terms and conditions of the loan and on the responsibilities of the borrower with respect to the loan needs to be provided. Under the final regulations, this information may be provided to the borrower during an entrance counseling session conducted in person; on a separate written form provided to the borrower that the borrower signs and returns to the school; or online or by interactive electronic means, with the borrower acknowledging receipt of the information.

Final § 682.604(f)(4) requires a school that conducts initial counseling online or through interactive electronic means to take reasonable steps to ensure that each student borrower receives the counseling materials and participates in and completes the initial counseling, which may include completion of any interactive program that tests the borrower's understanding of the terms and conditions of the borrower's loans.

Final § 682.604(f)(6) requires that initial counseling for Stafford Loan borrowers: explain the use of a Master Promissory Note; emphasize to the student borrower the seriousness and importance of the repayment obligation the student borrower is assuming; describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation; in the case of a student borrower (other than a loan made or originated by the school), emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, does not complete the program within the regular time for program completion, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school; inform the student borrower of sample monthly repayment amounts based on a range of student levels of indebtedness of Stafford loan borrowers, or student borrowers with Stafford and PLUS loans, depending on the types of loans the borrower has obtained—or the average indebtedness of other borrowers in the same program at the same school as the borrower; to the extent practicable, explain the effect of accepting the loan to be disbursed on the eligibility of the borrower for other forms of student financial assistance; provide information on how interest accrues and is capitalized during periods when the interest is not paid by either the borrower or the Secretary; inform the borrower of the option to pay the interest on an unsubsidized Stafford Loan while the borrower is in school;

explain the definition of half-time enrollment at the school, during regular terms and summer school, if applicable, and the consequences of not maintaining half-time enrollment; explain the importance of contacting the appropriate offices at the school if the borrower withdraws prior to completing the borrower's program of study so that the school can provide exit counseling, including information regarding the borrower's repayment options and loan consolidation; provide information on NSLDS and how the borrower can access the borrower's records; and provide the name of and contact information for the individual the borrower may contact if the borrower has any questions about the borrower's rights and responsibilities or the terms and conditions of the loan.

Final § 682.604(f)(7) requires that initial counseling for graduate or professional student PLUS Loan borrowers must: Inform the student borrower of sample monthly repayment amounts based on a range of student levels of indebtedness of graduate or professional student PLUS loan borrowers, or student borrowers with Stafford and PLUS loans, depending on the types of loans the borrower has obtained or the average indebtedness of other borrowers in the same program at the same school as the borrower; inform the borrower of the option to pay interest on a PLUS Loan while the borrower is in school; for a graduate or professional student PLUS Loan borrower who has received a prior FFEL Stafford, or Direct Subsidized or Unsubsidized loan, provide the information, specified in § 682.603(d)(1)(i) through (d)(1)(iii), that compares Stafford and PLUS Loan interest rates, interest accrual periods, and repayment period begin dates; and for a graduate or professional student PLUS Loan borrower who has not received a prior FFEL Stafford, or Direct Subsidized or Unsubsidized loan, provide the Stafford Loan initial counseling information specified in proposed § 682.604(f)(6)(i) through (f)(6)(xii).

Corresponding initial counseling requirements for Direct Subsidized, Direct Unsubsidized, and Direct PLUS loan borrowers are included in § 685.304(a)(1) through (a)(9) of the Direct Loan regulations.

These final regulations represent an increase in burden. The affected entities under the final regulations are borrowers and institutions. We estimate that burden in OMB 1845–0020 will increase by 475,152 hours for borrowers and 12,582 hours for institutions; and we estimate that burden in OMB 1845–0021 will increase by 217,900 hours for borrowers and 12,582 hours for institutions for a total of 487,734 hours which will be reflected in OMB Control Number 1845–0020 and a total of 230,482 hours in OMB Control Number 1845–0021.

Sections 674.42, 682.604 and 685.304—Exit Counseling

Final §§ 674.42(b), 682.604(g) and 685.304(b) continue to require a school to ensure that exit counseling is conducted with each Perkins, FFEL Stafford, and Direct Subsidized and Unsubsidized Loan borrower. In addition, schools are required to provide exit counseling to graduate or professional student FFEL PLUS Loan borrowers and graduate or professional student Direct PLUS Loan borrowers.

Under final §§ 674.42(b)(1), 682.604(g)(1) and 685.304(b)(2) and (b)(3), schools continue to be required to conduct exit counseling either in person, by audiovisual presentation, or by interactive electronic means. In each case, the school is required to ensure that the exit counseling is conducted shortly before the student borrower ceases at least half-time study at the school, and that an individual with expertise in the Title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. The alternative approach for student borrowers enrolled in a correspondence program or a study-abroad program that the home institution approves for credit is maintained in the new regulations. The current regulatory procedures for student borrowers who withdraw from school without the school's prior knowledge or fail to complete an exit counseling session as required also are maintained in these regulations.

Final §§ 674.42(b)(3), 682.604(g)(3) and 685.304(b)(6) continue to require that if exit counseling is conducted by electronic interactive means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials, participates in and completes the counseling. Final §§ 674.42(b)(4), 682.604(g)(4) and 685.304(b)(7) retain the requirement that schools maintain documentation substantiating the school's compliance with this section for each student borrower.

Final §§ 674.42(b)(2), 682.604(g)(2) and 685.304(b)(4) also require exit counseling for Perkins, FFEL, and Direct Loan student borrowers to: Review for the student borrower information on the availability of the Student Loan Ombudsman's office; inform the student borrower of the availability of Title IV loan information in the National Student Loan Data System (NSLDS) and how NSLDS can be used to obtain Title IV loan status information; and provide a general description of the types of tax benefits that may be available to borrowers.

Additionally, final §§ 682.604(g)(2)(ii) and 685.304(b)(4)(ii) require exit counseling for FFEL and Direct Loan student borrowers to review the available FFEL and Direct Loan repayment plan options, including standard, graduated, extended, income sensitive and income-based repayment plans, including a description of the different features of each plan and sample information showing the average anticipated monthly payments, and the difference in interest paid and total payments under each plan. The exit counseling also needs to inform FFEL and Direct Loan borrowers of their option to change repayment plans.

For Direct Loan borrowers, final § 685.304(b)(4)(vi) retains the requirement that schools explain to the student borrower how to contact the party servicing the Direct Loan.

These final regulations represent an increase in burden. The affected entities under the final regulations are borrowers and institutions. We estimate that burden will increase by 432,388 hours for borrowers and 12,582 hours for institutions for a total of 444,970 hours which will be reflected in OMB Control Number 1845–0020. We estimate that burden will increase by 213,542 hours for borrowers and 12,582 hours for institutions for a total of 226,124 hours which will be reflected in OMB Control Number 1845–0021. We estimate that burden will increase by 214,022 hours for borrowers and 5,940 hours for institutions for a total of 219,962 hours which will be reflected in OMB Control Number 1845–0023.

Sections 674.53, 674.57, and 674.58—Expansion of Teacher, Head Start, and Law Enforcement Cancellation Categories

These final regulations extend the new cancellation categories to current Federal Perkins Loan borrowers with outstanding balances on loans already in repayment and all new borrowers who perform eligible service that includes August 14, 2008, or begins on or after that date, regardless of whether information on the expanded cancellation categories appears on the borrower's promissory note.

Final § 674.53 provides that a teacher who is employed by an educational service agency, or a full-time special education teacher, including teachers of infants, toddlers, children, or youth

with disabilities, who is working in a system administered by an educational service agency, is eligible for cancellation benefits.

Final § 674.57 is amended so that the cancellation provisions for law enforcement or correction officers include borrowers who are employed full-time as an attorney in Federal Public Defender Organizations or Community Defender Organizations.

Final § 674.58 of the Head Start cancellation provisions is amended by expanding cancellation benefits to include borrowers who are performing qualifying service as full-time staff members in a pre-kindergarten or childcare program that is licensed or regulated by the State.

For purposes of determining a borrower's eligibility for cancellation benefits, final § 674.58(c)(1) and (2) define the terms ''pre-kindergarten program'' and ''childcare program.'' A pre-kindergarten program is defined as a State-funded program that serves children from birth through age six and addresses the children's cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development. A *childcare program* is defined as a program that is licensed and regulated by the State and provides child care services for fewer than 24 hours per day per child, unless care in excess of 24 consecutive hours is needed due to the nature of the parents' work.

Final § 674.58 also amends the Head Start cancellation provisions by renaming the regulatory section ''Cancellation for service in an early childhood education program'' to reflect the fact that the expansion of cancellation benefits available to borrowers under this provision are no longer limited to service in early childhood education programs authorized by the Head Start Act.

These final regulations represent an increase in burden. The affected entities under the final regulations are borrowers and institutions. We estimate that burden as a result of the final changes in § 674.53 will increase by 2,290 hours for borrowers and 1,145 hours for institutions for a total of 3,435 hours which will be reflected in OMB Control Numbers 1845–XXXC. We estimate that burden as a result of the final changes in § 674.57 will increase by 385 hours for borrowers and 193 hours for institutions for a total of 578 hours which will be reflected in OMB Control Number 1845–XXXC. We estimate that burden as a result of the final changes in § 674.58 will increase by 2,648 hours for borrowers and 1,325 hours for institutions for a total of 3,973 hours which will be reflected in OMB Control Number 1845–XXXC.

Section 674.56—Addition of New Public Service Cancellation Categories

Final § 674.56 adds new public service cancellation categories for borrowers in the Federal Perkins Loan program who are performing qualifying service as: full-time faculty members at a Tribal College or University; full-time fire fighters who serve a local, State, or Federal fire department or fire district; librarians with a master's degree in library science who are employed in an elementary or secondary school that qualifies for Title I funding, or in a public library that serves a geographic area that includes one or more Title I-eligible schools; or full-time speech-language pathologists with a master's degree who are working exclusively with Title I-eligible schools.

These final regulations extend the new cancellation categories to current Federal Perkins Loan borrowers with outstanding balances on loans already in repayment and all new borrowers who perform eligible service that includes August 14, 2008, or begins on or after that date, regardless of whether information on the expanded cancellation categories appears on the borrower's promissory note.

These final regulations represent an increase in burden. The affected entities under the final regulations are borrowers and institutions. We estimate that burden will increase by 3,436 hours for borrowers and 1,718 hours for institutions for a total of 5,154 hours which will be reflected in OMB Control Number 1845–XXXC.

Section 674.59—Military Service Cancellation

Final § 674.59 amends the cancellation rate for each year of qualifying service for the military service cancellation. Borrowers who are serving in areas of hostility are now eligible to receive a cancellation of up to 100 percent of the loan for each full year of active duty service that includes August 14, 2008, or begins on or after that date in the following increments: 15 percent for the first and second years of service; 20 percent for the third and fourth years of service; and, 30 percent for the fifth year of service.

These final regulations represent an increase in burden. The affected entities under the final regulations are borrowers and institutions. We estimate that burden will increase by 20,532 hours for borrowers and 10,266 hours for institutions for a total of 30,798 hours which will be reflected in OMB Control Number 1845–XXXC.

Consistent with the discussion in the preceding paragraphs, the following chart describes the sections of the final regulations involving information collections, the information collected, and the collections that the Department submitted to the Office of Management and Budget for approval and public comment under the Paperwork and Reduction Act.

Regulatory section	Information section	Collection
601.10	Final § 601.10(a) requires that a covered institution, or an institution-affiliated organization of a covered institution, that participates in a preferred lender arrangement disclose the information identified on the model disclosure form developed by the Secretary and its preferred lender list.	OMB 1845–XXXA. This is a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on the form. There will be an increase in burden of 335,181 hours.

Regulatory section	Information section	Collection
601.11	Final § 601.11(a) requires a covered institution, or an institution-affiliated organization of a covered institution, to provide to a prospective borrower private education loan disclosures consistent with section 128(e)(1) of the TILA; to provide a student who requests a private education loan a self-certification form; to inform the prospective borrower that he or she may qualify for loans or other assistance under Title IV of the HEA; and to inform the prospective borrower that the terms and conditions of Title IV, HEA program loans may be more favorable than the provisions of private education loans.	OMB 1845–XXXA. This is a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on the form. There will be an increase in burden of 1,940,515 hours.
601.20	Final § 601.20(a) requires a covered institution, and an institution-affiliated organization that participates in a preferred lender arrangement to prepare and submit to the Secretary an annual report.	OMB 1845–XXXA. This is a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 336 hours.
601.21	Final § 601.21 requires a covered institution that participates in a preferred lender arrangement to develop a code of conduct with respect to FFEL Program loans and private education loans with which the institution's agents must comply to prohibit a conflict of interest with the responsibilities of an agent of an institution with respect to FFEL Program loans and private education loans.	OMB 1845–XXXA. This is a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 4,697 hours.
601.30	Final § 601.30 requires a covered institution participating in the William D. Ford Direct Loan Program to make the information identified in a model disclosure form developed by the Secretary available to students attending or planning to attend the institution, or the families of such students. If the institution provides information regarding a private education loan to a prospective borrower, the institution must concurrently provide the borrower with the information identified on the model disclosure form.	OMB 1845–XXXB. This is a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 58,024 hours.
601.40	Final § 601.40 sets forth the information the lenders must provide to the Secretary on an annual basis regarding any reasonable expenses paid or provided to any agent of a covered institution who is employed in the financial aid office or has responsibilities with respect to education loans or other financial aid of the institution for service by the employee on an advisory board, commission or group established by a lender or a group of lenders.	OMB 1845–XXXA. This is a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 917,032 hours.
668.181, 668.200, & 668.202.	Final §§ 668.181, 668.200, and 668.202 provides a new proposed subpart N, part 668 to incorporate the three-year method under § 668.202. With regard to the transition period, final §§ 668.181 and 668.200(b) specifies that the Department will issue annually two sets of draft and official cohort default rates for fiscal years 2009, 2010, and 2011. As a result, the statement of purpose of this subpart and the description of how the Department will calculate and apply the 3-year cohort default rate will not impact the burden in OMB 1845–0022.	OMB 1845–0022. No change in burden.
668.16	Final § 668.16(m) requires institutions to have the new three-year cohort default rate, and incorporates the transition rules and the basis for appeals for that cohort default rate. The final changes in § 668.16 apply the current rules on administrative capability during the transition period. We estimate that these regulations will not impact burden in OMB 1845–0022.	OMB 1845–0022. No change in burden.
668.186, 668.190, 668.191, 668.209, 668.210, 668.211, and 668.212.	These final regulations eliminate the need to request a loan record detail report from the Department; instead an electronic loan report will be sent to each institution.	OMB 1845–0022. There will be a decrease in burden of 725 hours.
682.604 & 685.304 ..	Final §§ 682.604 and 685.304 requires that institutions provide initial counseling for Stafford and graduate or professional student PLUS Loan borrowers.	OMB 1845–0020. There will be an increase in burden of 487,734 hours. OMB 1845–0021. There will be an increase in burden of 230,482 hours.
674.42, 682.604, and 685.304.	Final §§ 674.42, 682.604 and 685.304 continues to require a school to ensure that exit counseling is conducted with each Perkins, FFEL Stafford, and Direct Subsidized and Unsubsidized Loan borrower. In addition, schools are required to provide exit counseling to graduate or professional student FFEL PLUS Loan borrowers and graduate or professional student Direct PLUS Loan borrowers.	OMB 1845–0020. There will be an increase in burden of 457,552 hours. OMB 1845–0021. There will be an increase in burden of 226,124 hours. OMB 1845–0023. There will be an increase in burden of 219,962 hours.

Regulatory section	Information section	Collection
674.53, 674.57, and 674.58.	Final §§ 674.53, 674.57, and 674.58 extends the new cancellation categories to current Federal Perkins Loan borrowers with outstanding balances on loans already in repayment and all new borrowers who perform eligible service that includes August 14, 2008, or begins on or after that date, regardless of whether information on the expanded the cancellation categories appears on the borrower's promissory note.	OMB 1845–XXXC. This is a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 7,986 hours.
674.56	Final § 674.56 adds new public service cancellation categories for borrowers in the Federal Perkins Loan program who are performing qualifying service as: full-time faculty members at a Tribal College or University; full-time fire fighters who serve a local, State, or Federal fire department or fire district; librarians with a master's degree in library science who are employed in an elementary or secondary school that qualifies for Title I funding, or in a public library that serves a geographic area that includes one or more Title I-eligible schools; or full-time speech-language pathologists with a master's degree who are working exclusively with Title I-eligible schools.	OMB 1845–XXXC. This is a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 5,154 hours.
674.59	Final § 674.59 amends the cancellation rate for each year of qualifying service for the military service cancellation. Borrowers who are serving in areas of hostility are now eligible to receive a cancellation of up to 100 percent of the loan for each full year of active duty service that includes August 14, 2008, or begins on or after that date in the following increments: 15 percent for the first and second years; 20 percent for the third and fourth years of service; and, 30 percent for the fifth year of service.	OMB 1845–XXXC. This is a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 30,798 hours.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, and based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family Education Loan Program; 84.038 Federal Perkins Loan Program; 84.268 William D. Ford Federal Direct Loan Program.)

List of Subjects

34 CFR Part 601

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Parts 674, 682 and 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: October 14, 2009.

Arne Duncan,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends chapter VI of title 34 of the Code of Federal Regulations as follows:

■ 1. Add part 601 to read as follows:

PART 601—INSTITUTION AND LENDER REQUIREMENTS RELATING TO EDUCATION LOANS

Subpart A—General

Sec.
601.1 Scope.
601.2 Definitions.

Subpart B—Loan Information To Be Disclosed by Covered Institutions and Institution-Affiliated Organizations

Sec.
601.10 Preferred lender arrangement disclosures.
601.11 Private education loan disclosures and self-certification form.
601.12 Use of institution and lender name.

Subpart C—Responsibilities of Covered Institutions and Institution-Affiliated Organizations

Sec.
601.20 Annual report.
601.21 Code of conduct.

Subpart D—Loan Information To Be Disclosed by Institutions Participating in the William D. Ford Direct Loan Program

Sec.
601.30 Duties of institutions.

Subpart E—Lender Responsibilities

Sec.
601.40 Disclosure and reporting requirements for lenders.

Authority: 20 U.S.C. 1019–1019d, 1021, 1094(a) and (h).

Subpart A—General

§ 601.1 Scope.

This part establishes disclosure and reporting requirements for covered institutions, institution-affiliated organizations, and lenders that provide, issue, recommend, promote, endorse, or provide information relating to education loans. Education loans include loans authorized by the Higher Education Act of 1965, as amended (HEA) and private education loans.

Authority: 20 U.S.C. 1019–1019d, 1021, 1094(a)(25) and (e).

§ 601.2 Definitions.

(a) The definitions of the following terms used in this part are set forth in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Federal Family Education Loan (FFEL) Program

Secretary

Title IV, HEA program

(b) The following definitions also apply to this part:

Agent: An officer or employee of a covered institution or an institution-affiliated organization.

Covered institution: Any institution of higher education, proprietary institution of higher education, postsecondary vocational institution, or institution outside the United States, as these terms are defined in 34 CFR part 600, that receives any Federal funding or assistance.

Education loan: Except when used as part of the term ''private education loan'',

(1) Any loan made, insured, or guaranteed under the Federal Family Education Loan (FFEL) Program;

(2) Any loan made under the William D. Ford Federal Direct Loan Program; or

(3) A private education loan.

Institution-affiliated organization: (1) Any organization that—

(i) Is directly or indirectly related to a covered institution; and

(ii) Is engaged in the practice of recommending, promoting, or endorsing education loans for students attending such covered institution or the families of such students.

(2) An institution-affiliated organization—

(i) May include an alumni organization, athletic organization, foundation, or social, academic, or professional organization, of a covered institution; and

(ii) Does not include any lender with respect to any education loan secured, made, or extended by such lender.

Lender: (1) An eligible lender in the Federal Family Education Loan (FFEL) Program, as defined in 34 CFR 682.200(b);

(2) The Department in the Direct Loan program;

(3) In the case of a private educational loan, a private education lender as defined in section 140 of the Truth in Lending Act; and

(4) Any other person engaged in the business of securing, making, or extending education loans on behalf of the lender.

Officer: A director or trustee of a covered institution or institution-affiliated organization, if such individual is treated as an employee of such covered institution or institution-affiliated organization, respectively.

Preferred lender arrangement: (1) An arrangement or agreement between a lender and a covered institution or an institution-affiliated organization of such covered institution—

(i) Under which a lender provides or otherwise issues education loans to the students attending such covered institution or the families of such students; and

(ii) That relates to such covered institution or such institution-affiliated organization recommending, promoting, or endorsing the education loan products of the lender.

(2) A preferred lender arrangement does not include—

(i) Arrangements or agreements with respect to loans made under the William D. Ford Federal Direct Loan Program; or

(ii) Arrangements or agreements with respect to loans that originate through the PLUS Loan auction pilot program under section 499(b) of the HEA.

(3) For purpose of this definition, an arrangement or agreement does not exist if the private education loan provided or issued to a student attending a covered institution is made by the covered institution or by an institution-affiliated organization of the covered institution, and the private education loan is—

(i) Funded by the covered institution's or institution-affiliated organization's own funds;

(ii) Funded by donor-directed contributions;

(iii) Made under title VII or title VIII of the Public Service Health Act; or

(iv) Made under a State-funded financial aid program, if the terms and conditions of the loan include a loan forgiveness option for public service.

Private education loan: As the term is defined in 12 CFR 226.46(b)(5), a loan provided by a private educational lender that is not a title IV loan and that is issued expressly for postsecondary education expenses to a borrower, regardless of whether the loan is provided through the educational institution that the student attends or directly to the borrower from the private educational lender. A private education loan does not include—

(1) An extension of credit under an open end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling; or

(2) An extension of credit in which the educational institution is the lender if—

(i) The term of the extension of credit is 90 days or less; or

(ii) An interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.

Authority: 20 U.S.C. 1019.

Subpart B—Loan Information To Be Disclosed by Covered Institutions and Institution-Affiliated Organizations

§ 601.10 Preferred lender arrangement disclosures.

(a) A covered institution, or an institution-affiliated organization of such covered institution, that participates in a preferred lender arrangement must disclose—

(1) On such covered institution's or institution-affiliated organization's Web site and in all informational materials described in paragraph (b) of this section that describe or discuss education loans—

(i) The maximum amount of Federal grant and loan aid under title IV of the HEA available to students, in an easy to understand format;

(ii) The information identified on a model disclosure form developed by the Secretary pursuant to section 153(a)(2)(B) of the HEA, for each type of education loan that is offered pursuant to a preferred lender arrangement of the institution or institution-affiliated organization to students of the institution or the families of such students; and

(iii) A statement that such institution is required to process the documents required to obtain a loan under the Federal Family Education Loan (FFEL) Program from any eligible lender the student selects; and

(2) On such covered institution's or institution-affiliated organization's Web site and in all informational materials described in paragraph (b) of this section that describe or discuss private education loans—

(i) In the case of a covered institution, the information that the Board of Governors of the Federal Reserve System requires to be disclosed under

section 128(e)(11) of the Truth in Lending Act (15 U.S.C. 1638(e)(11)), for each type of private education loan offered pursuant to a preferred lender arrangement of the institution to students of the institution or the families of such students; and

(ii) In the case of an institution-affiliated organization of a covered institution, the information the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(1) of the Truth in Lending Act (15 U.S.C. 1638(e)(1)), for each type of private education loan offered pursuant to a preferred lender arrangement of the organization to students of such institution or the families of such students.

(b) The informational materials described in paragraphs (a)(1) and (a)(2) of this section are publications, mailings, or electronic messages or materials that—

(1) Are distributed to prospective or current students of a covered institution and families of such students; and

(2) Describe or discuss the financial aid opportunities available to students at an institution of higher education.

(c)(1) Each covered institution and each institution-affiliated organization that participates in a preferred lender arrangement must provide the information described in paragraph (a)(1)(ii) of this section, and the information described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, respectively, for each type of education loan offered pursuant to the preferred lender arrangement.

(2) The information identified in paragraph (c)(1) of this section must be provided to students attending the covered institution, or the families of such students, as applicable, annually and must be provided in a manner that allows for the students or their families to take such information into account before selecting a lender or applying for an education loan.

(d) If a covered institution compiles, maintains, and makes available a preferred lender list as required under § 668.14(b)(28), the institution must—

(1) Clearly and fully disclose on such preferred lender list—

(i) Not less than the information required to be disclosed under section 153(a)(2)(A) of the HEA;

(ii) Why the institution participates in a preferred lender arrangement with each lender on the preferred lender list, particularly with respect to terms and conditions or provisions favorable to the borrower; and

(iii) That the students attending the institution, or the families of such students, do not have to borrow from a lender on the preferred lender list;

(2) Ensure, through the use of the list of lender affiliates provided by the Secretary under section 487(h)(2) of the HEA, that—

(i) There are not less than three FFEL lenders that are not affiliates of each other included on the preferred lender list and, if the institution recommends, promotes, or endorses private education loans, there are not less than two lenders of private education loans that are not affiliates of each other included on the preferred lender list; and

(ii) The preferred lender list under paragraph (d) of this section—

(A) Specifically indicates, for each listed lender, whether the lender is or is not an affiliate of each other lender on the preferred lender list; and

(B) If a lender is an affiliate of another lender on the preferred lender list, describes the details of such affiliation;

(3) Prominently disclose the method and criteria used by the institution in selecting lenders with which to participate in preferred lender arrangements to ensure that such lenders are selected on the basis of the best interests of the borrowers, including—

(i) Payment of origination or other fees on behalf of the borrower;

(ii) Highly competitive interest rates, or other terms and conditions or provisions of Title IV, HEA program loans or private education loans;

(iii) High-quality servicing for such loans; or

(iv) Additional benefits beyond the standard terms and conditions or provisions for such loans;

(4) Exercise a duty of care and a duty of loyalty to compile the preferred lender list under paragraph (d) of this section without prejudice and for the sole benefit of the students attending the institution, or the families of such students; and

(5) Not deny or otherwise impede the borrower's choice of a lender or cause unnecessary delay in loan certification under title IV of the HEA for those borrowers who choose a lender that is not included on the preferred lender list.

(Approved by the Office of Management and Budget under control number 1845–XXXA)

Authority: 20 U.S.C. 1019a(a)(1)(A) and 1019b(c).

§ 601.11 Private education loan disclosures and self-certification form.

(a) A covered institution, or an institution-affiliated organization of such covered institution, that provides information regarding a private education loan from a lender to a prospective borrower must provide private education loan disclosures to the prospective borrower, regardless of whether the covered institution or institution-affiliated organization participates in a preferred lender arrangement.

(b) The private education loan disclosures must—

(1) Provide the prospective borrower with the information the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(1) of the Truth in Lending Act (15 U.S.C. 1638(e)(1)) for such loan;

(2) Inform the prospective borrower that—

(i) The prospective borrower may qualify for loans or other assistance under title IV of the HEA; and

(ii) The terms and conditions of Title IV, HEA program loans may be more favorable than the provisions of private education loans.

(c) The covered institution or institution-affiliated organization must ensure that information regarding private education loans is presented in such a manner as to be distinct from information regarding Title IV, HEA program loans.

(d) Upon an enrolled or admitted student applicant's request for a private education loan self-certification form, an institution must provide to the applicant, in written or electronic form—

(1) The self-certification form for private education loans developed by the Secretary in consultation with the Board of Governors of the Federal Reserve System, to satisfy the requirements of section 128(e)(3) of the Truth in Lending Act (15 U.S.C. 1638(e)(3)); and

(2) The information required to complete the form, to the extent the institution possesses such information as specified in 34 CFR 668.14(b)(29).

(Approved by the Office of Management and Budget under control number 1845–XXXA)

Authority: 20 U.S.C. 1019a(a)(1)(B) and 1019d.

§ 601.12 Use of institution and lender name.

A covered institution, or an institution-affiliated organization of such covered institution, that participates in a preferred lender arrangement with a lender regarding private education loans must—

(a) Not agree to the lender's use of the name, emblem, mascot, or logo of such institution or organization, or other words, pictures, or symbols readily identified with such institution or organization, in the marketing of private education loans to students attending

such institution in any way that implies that the loan is offered or made by such institution or organization instead of the lender; and

(b) Ensure that the name of the lender is displayed in all information and documentation related to the private education loans described in this section.

Authority: 20 U.S.C. 1019a(a)(2)–(a)(3).

Subpart C—Responsibilities of Covered Institutions and Institution-Affiliated Organizations

§ 601.20 Annual report.

Each covered institution, and each institution-affiliated organization of such covered institution, that participates in a preferred lender arrangement, must—

(a) Prepare and submit to the Secretary an annual report, by a date determined by the Secretary, that includes, for each lender that participates in a preferred lender arrangement with such covered institution or organization—

(1) The information described in § 601.10(c); and

(2) A detailed explanation of why such covered institution or institution-affiliated organization participates in a preferred lender arrangement with the lender, including why the terms, conditions, and provisions of each type of education loan provided pursuant to the preferred lender arrangement are beneficial for students attending such institution, or the families of such students, as applicable; and

(b) Ensure that the report required under this section is made available to the public and provided to students attending or planning to attend such covered institution and the families of such students.

(Approved by the Office of Management and Budget under control number 1845–XXXA)

Authority: 20 U.S.C. 1019b(c)(2).

§ 601.21 Code of conduct.

(a)(1) A covered institution that participates in a preferred lender arrangement must comply with the code of conduct requirements described in this section.

(2) The covered institution must—

(i) Develop a code of conduct with respect to FFEL Program loans and private education loans with which the institution's agents must comply. The code of conduct must—

(A) Prohibit a conflict of interest with the responsibilities of an agent of an institution with respect to FFEL Program loans and private education loans; and

(B) At a minimum, include the provisions specified in paragraph (c) of this section;

(ii) Publish such code of conduct prominently on the institution's Web site; and

(iii) Administer and enforce such code by, at a minimum, requiring that all of the institution's agents with responsibilities with respect to FFEL Program loans or private education loans be annually informed of the provisions of the code of conduct.

(b) Any institution-affiliated organization of a covered institution that participates in a preferred lender arrangement must—

(1) Comply with the code of conduct developed and published by such covered institution under paragraph (a)(1) of this section;

(2) If such institution-affiliated organization has a Web site, publish such code of conduct prominently on the Web site; and

(3) Administer and enforce such code of conduct by, at a minimum, requiring that all of such institution-affiliated organization's agents with responsibilities with respect to FFEL Program loans or private education loans be annually informed of the provisions of such code of conduct.

(c) A covered institution's code of conduct must prohibit—

(1) Revenue-sharing arrangements with any lender. The institution must not enter into any revenue-sharing arrangement with any lender. For purposes of this paragraph, the term *revenue-sharing arrangement* means an arrangement between a covered institution and a lender under which—

(i) A lender provides or issues a FFEL Program loan or private education loan to students attending the institution or to the families of such students; and

(ii) The institution recommends the lender or the loan products of the lender and in exchange, the lender pays a fee or provides other material benefits, including revenue or profit sharing, to the institution, an agent;

(2)(i) Employees of the financial aid office receiving gifts from a lender, a guarantor, or a loan servicer. Agents who are employed in the financial aid office of the institution or who otherwise have responsibilities with respect to FFEL Program loans or private education loans, must not solicit or accept any gift from a lender, guarantor, or servicer of FFEL Program loans or private education loans;

(ii) For purposes of paragraph (c) of this section, the term *gift* means any gratuity, favor, discount, entertainment, hospitality, loan, or other item having a monetary value of more than a de minimus amount. The term includes a gift of services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred;

(iii) The term *gift* does not include any of the following:

(A) Standard material, activities, or programs on issues related to a loan, default aversion, default prevention, or financial literacy, such as a brochure, a workshop, or training.

(B) Food, refreshments, training, or informational material furnished to an agent as an integral part of a training session that is designed to improve the service of a lender, guarantor, or servicer of FFEL Program loans or private education loans to the institution, if such training contributes to the professional development of the agent.

(C) Favorable terms, conditions, and borrower benefits on a FFEL Program loan or private education loan provided to a student employed by the institution if such terms, conditions, or benefits are comparable to those provided to all students of the institution.

(D) Entrance and exit counseling services provided to borrowers to meet the institution's responsibilities for entrance and exit counseling as required by §§ 682.604(f) and 682.604(g), as long as the institution's staff are in control of the counseling (whether in person or via electronic capabilities) and such counseling does not promote the products or services of any specific lender.

(E) Philanthropic contributions to an institution from a lender, servicer, or guarantor of FFEL Program loans or private education loans that are unrelated to FFEL Program loans or private education loans or any contribution from any lender, servicer, or guarantor, that is not made in exchange for any advantage related to FFEL Program loans or private education loans.

(F) State education grants, scholarships, or financial aid funds administered by or on behalf of a State; and

(iv) For purposes of paragraph (c) of this section, a gift to a family member of an agent, or to any other individual based on that individual's relationship with the agent, is considered a gift to the agent if—

(A) The gift is given with the knowledge and acquiescence of the agent; and

(B) The agent has reason to believe the gift was given because of the official position of the agent;

(3) Consulting or other contracting arrangements. An agent who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to FFEL Program loans or private education loans must not accept from any lender or affiliate of any lender any fee, payment, or other financial benefit (including the opportunity to purchase stock) as compensation for any type of consulting arrangement or other contract to provide services to a lender or on behalf of a lender relating to FFEL Program loans or private education loans. Nothing in paragraph (c)(3) of this section will be construed as prohibiting—

(i) An agent who is not employed in the institution's financial aid office and who does not otherwise have responsibilities with respect to FFEL Program loans or private education loans from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of education loans;

(ii) An agent who is not employed in the institution's financial aid office but who has responsibility with respect to FFEL Program loans or private education loans from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of FFEL Program loans or private education loans, if the institution has a written conflict of interest policy that clearly sets forth that agents must recuse themselves from participating in any decision of the board regarding FFEL Program loans or private education loans at the institution; or

(iii) An officer, employee, or contractor of a lender, guarantor, or servicer of FFEL Program loans or private education loans from serving on a board of directors, or serving as a trustee, of an institution, if the institution has a written conflict of interest policy that the board member or trustee must recuse themselves from any decision regarding FFEL Program loans or private education loans at the institution;

(4) Directing borrowers to particular lenders or delaying loan certifications. The institution must not—

(i) For any first-time borrower, assign, through award packaging or other methods, the borrower's loan to a particular lender; or

(ii) Refuse to certify, or delay certification of, any loan based on the borrower's selection of a particular lender or guaranty agency;

(5)(i) Offers of funds for private loans. The institution must not request or accept from any lender any offer of funds to be used for private education loans, including funds for an opportunity pool loan, to students in exchange for the institution providing concessions or promises regarding providing the lender with—

(A) A specified number of FFEL Program loans or private education loans;

(B) A specified loan volume of such loans; or

(C) A preferred lender arrangement for such loans.

(ii) For purposes of paragraph (c) of this section, the term *opportunity pool loan* means a private education loan made by a lender to a student attending the institution or the family member of such a student that involves a payment, directly or indirectly, by such institution of points, premiums, additional interest, or financial support to such lender for the purpose of such lender extending credit to the student or the family;

(6) Staffing assistance. The institution must not request or accept from any lender any assistance with call center staffing or financial aid office staffing, except that nothing in this paragraph will be construed to prohibit the institution from requesting or accepting assistance from a lender related to—

(i) Professional development training for financial aid administrators;

(ii) Providing educational counseling materials, financial literacy materials, or debt management materials to borrowers, provided that such materials disclose to borrowers the identification of any lender that assisted in preparing or providing such materials; or

(iii) Staffing services on a short-term, nonrecurring basis to assist the institution with financial aid-related functions during emergencies, including State-declared or Federally declared natural disasters, Federally declared national disasters, and other localized disasters and emergencies identified by the Secretary; and

(7) Advisory board compensation. Any employee who is employed in the financial aid office of the institution, or who otherwise has responsibilities with respect to FFEL Program loans or private education loans or other student financial aid of the institution, and who serves on an advisory board, commission, or group established by a lender, guarantor, or group of lenders or guarantors, must not receive anything of value from the lender, guarantor, or group of lenders or guarantors, except that the employee may be reimbursed for reasonable expenses, as that term is defined in § 668.16(d)(2)(ii), incurred in serving on such advisory board, commission, or group.

(Approved by the Office of Management and Budget under control number 1845–XXXA)

Authority: 20 U.S.C. 1019b(c)(2)), 1094(a)(25) and (e).

Subpart D—Loan Information to be Disclosed by Institutions Participating in the William D. Ford Direct Loan Program

§ 601.30 Duties of institutions.

(a) Each covered institution participating in the William D. Ford Direct Loan Program under part D of title IV of the HEA must—

(1) Make the information identified in a model disclosure form developed by the Secretary pursuant to section 154(a) of the HEA available to students attending or planning to attend the institution, or the families of such students, as applicable; and

(2) If the institution provides information regarding a private education loan to a prospective borrower, concurrently provide such borrower with the information identified on the model disclosure form that the Secretary provides to the institution under section 154(a) of the HEA.

(b) In providing the information required under paragraph (a) of this section, a covered institution may use a comparable form designed by the institution instead of the model disclosure form.

(Approved by the Office of Management and Budget under control number 1845–XXXB)

Authority: 20 U.S.C. 1019c(b).

Subpart E—Lender Responsibilities

§ 601.40 Disclosure and reporting requirements for lenders.

(a) *Disclosures to borrowers.* (1) A lender must, at or prior to disbursement of a FFEL loan, provide the borrower, in writing (including through electronic means), in clear and understandable terms, the disclosures required in § 682.205(a) and (b).

(2) A lender must, for each of its private education loans, comply with the disclosure requirements under section 128(e) of the Truth in Lending Act (15 U.S.C. 1638(e)).

(b) *Reports to the Secretary.* Each FFEL lender must report annually to the Secretary—

(1) Any reasonable expenses paid or provided to any agent of a covered institution who is employed in the financial aid office or has other responsibilities with respect to education loans or other student financial aid of the institution for service on a lender advisory board, commission or group established by a lender or group of lenders; or

(2) Any similar expenses paid or provided to any agent of an institution-affiliated organization who is involved in recommending, promoting, or endorsing education loans.

(3) The report required by this paragraph must include—

(i) The amount of expenses paid or provided for each specific instance in which the lender provided expenses;

(ii) The name of any agent described in paragraph (b)(1) of this section to whom the expenses were paid or provided;

(iii) The dates of the activity for which the expenses were paid or provided; and

(iv) A brief description of the activity for which the expenses were paid or provided.

(c) *Lender certification of compliance.* (1) Any FFEL lender participating in one or more preferred lender arrangements must annually certify to the Secretary its compliance with the Higher Education Act of 1965, as amended; and

(2) If the lender is required to submit an audit under 34 CFR 682.305(c), the lender's compliance with the requirements under this section must be reported on and attested to annually by the lender's auditor.

(3) A lender may comply with the certification requirements of this section if the certifications are provided as part of the annual audit required by 34 CFR 682.305(c).

(4) A lender who is not required to submit an audit must submit the required certification at such time and in such manner as directed by the Secretary.

(d) *Annual lender report to covered institutions.* A FFEL lender with a preferred lender arrangement with a covered institution or an institution-affiliated organization relating to FFEL loans must annually, on a date prescribed by the Secretary, provide to the covered institution or the institution-affiliated organization and to the Secretary, such information required by the Secretary in relation to the FFEL loans the lender plans to offer pursuant to that preferred lender arrangement for the next award year.

(Approved by the Office of Management and Budget under control number 1845–XXXA)

Authority: 20 U.S.C. 1019a(b) and 1019b(b).

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 2. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

■ 3. Section 668.14 is amended by adding new paragraphs (b)(27), (b)(28) and (b)(29) as follows:

§ 668.14 Program participation agreement.

* * * * *

(b) * * *

(27) In the case of an institution participating in a Title IV, HEA loan program, the institution—

(i) Will develop, publish, administer, and enforce a code of conduct with respect to loans made, insured or guaranteed under the Title IV, HEA loan programs in accordance with 34 CFR 601.21; and

(ii) Must inform its officers, employees, and agents with responsibilities with respect to loans made, insured or guaranteed under the Title IV, HEA loan programs annually of the provisions of the code required under paragraph (b)(27) of this section;

(28) For any year in which the institution has a preferred lender arrangement (as defined in 34 CFR 601.2(b)), it will at least annually compile, maintain, and make available for students attending the institution, and the families of such students, a list in print or other medium, of the specific lenders for loans made, insured, or guaranteed under title IV of the HEA or private education loans that the institution recommends, promotes, or endorses in accordance with such preferred lender arrangement. In making such a list, the institution must comply with the requirements in 34 CFR 682.212(h) and 34 CFR 601.10;

(29)(i) It will, upon the request of an enrolled or admitted student who is an applicant for a private education loan (as defined in 34 CFR 601.2(b)), provide to the applicant the self-certification form required under 34 CFR 601.11(d) and the information required to complete the form, to the extent the institution possesses such information, including—

(A) The applicant's cost of attendance at the institution, as determined by the institution under part F of title IV of the HEA;

(B) The applicant's estimated financial assistance, including amounts of financial assistance used to replace the expected family contribution as determined by the institution in accordance with title IV, for students who have completed the Free Application for Federal Student Aid; and

(C) The difference between the amounts under paragraphs (b)(29)(i)(A) and (29)(i)(B) of this section, as applicable.

(ii) It will, upon the request of the applicant, discuss with the applicant the availability of Federal, State, and institutional student financial aid;

* * * * *

■ 4. Section 668.16 is amended by:

■ A. Revising paragraph (d).

■ B. Revising paragraph (m).

■ C. Revising the authority citation that appears at the end of the section.

The revisions read as follows:

§ 668.16 Standards of administrative capability.

* * * * *

(d)(1) Establishes and maintains records required under this part and the individual Title IV, HEA program regulations; and

(2)(i) Reports annually to the Secretary on any reasonable reimbursements paid or provided by a private education lender or group of lenders as described under section 140(d) of the Truth in Lending Act (15 U.S.C. 1631(d)) to any employee who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to education loans, including responsibilities involving the selection of lenders, or other financial aid of the institution, including—

(A) The amount for each specific instance of reasonable expenses paid or provided;

(B) The name of the financial aid official, other employee, or agent to whom the expenses were paid or provided;

(C) The dates of the activity for which the expenses were paid or provided; and

(D) A brief description of the activity for which the expenses were paid or provided.

(ii) Expenses are considered to be reasonable if the expenses—

(A) Meet the standards of and are paid in accordance with a State government reimbursement policy applicable to the entity; or

(B) Meet the standards of and are paid in accordance with the applicable Federal cost principles for reimbursement, if no State policy that is applicable to the entity exists.

(iii) The policy must be consistently applied to an institution's employees reimbursed under this paragraph;

* * * * *

(m)(1) Has a cohort default rate—

(i) That is less than 25 percent for each of the three most recent fiscal years during which rates have been issued, to the extent those rates are calculated under subpart M of this part;

(ii) On or after 2014, that is less than 30 percent for at least two of the three most recent fiscal years during which the Secretary has issued rates for the institution under subpart N of this part; and

(iii) As defined in 34 CFR 674.5, on loans made under the Federal Perkins Loan Program to students for attendance at that institution that does not exceed 15 percent.

(2)(i) However, if the Secretary determines that an institution's administrative capability is impaired solely because the institution fails to comply with paragraph (m)(1) of this section, and the institution is not subject to a loss of eligibility under §§ 668.187(a) or 668.206(a), the Secretary allows the institution to continue to participate in the Title IV, HEA programs. In such a case, the Secretary may provisionally certify the institution in accordance with § 668.13(c) except as provided in paragraphs (m)(2)(ii), (m)(2)(iii), (m)(2)(iv), and (m)(2)(v) of this section.

(ii) An institution that fails to meet the standard of administrative capability under paragraph (m)(1)(ii) based on two cohort default rates that are greater than or equal to 30 percent but less than or equal to 40 percent is not placed on provisional certification under paragraph (m)(2)(i) of this section—

(A) If it has timely filed a request for adjustment or appeal under §§ 668.209, 668.210, or 668.212 with respect to the second such rate, and the request for adjustment or appeal is either pending or succeeds in reducing the rate below 30 percent; or

(B) If it has timely filed an appeal under §§ 668.213 or 668.214 after receiving the second such rate, and the appeal is either pending or successful.

(iii) The institution may appeal the loss of full participation in a Title IV, HEA program under paragraph (m)(2)(i) of this section by submitting an erroneous data appeal in writing to the Secretary in accordance with and on the grounds specified in §§ 668.192 or 668.211 as applicable;

(iv) If you have 30 or fewer borrowers in the three most recent cohorts of borrowers used to calculate your cohort default rate under subpart N of this part, we not provisionally certify you solely based on cohort default rates;

(v) If a rate that would otherwise potentially subject you to provisional certification under paragraph (m)(1)(ii) and (m)(2)(i) of this section is calculated as an average rate, we will not provisionally certify you solely based on cohort default rates;

* * * * *

Authority: 20 U.S.C. 1082, 1085, 1092, 1094, and 1099c.

■ 5. Section 668.42 is amended by:

■ A. In paragraph (a)(1), removing the word ''student's'' and adding, in its place, the word ''students''.

■ B. In paragraph (a), adding a new paragraph (4).

■ C. In paragraph (c) introductory text, removing the word ''shall'' and adding, in its place, the word ''must''.

■ D. In paragraph (c)(5), adding the word ''and'' after the punctuation '';''.

■ E. In paragraph (c)(6), removing the words ''The institution shall provide and collect exit counseling information'' and adding, in their place, the words ''The exit counseling information the institution provides and collects''.

■ F. In paragraph (c)(6), removing the punctuation and word ''; and'' and adding, in their place, the punctuation ''.''.

■ G. In paragraph (c), removing paragraph (7).

The addition reads as follows:

§ 668.42 Financial assistance information.

(a) * * *

(4) The institution must describe the terms and conditions of the loans students receive under the Federal Family Education Loan Program, the William D. Ford Federal Direct Student Loan Program, and the Federal Perkins Loan Program.

* * * * *

■ 6. Revise the subpart heading of subpart M to read as follows:

Subpart M—Two Year Cohort Default Rates

■ 7. Section 668.181 is revised to read as follows:

§ 668.181 Purpose of this subpart.

(a) *General.* Your cohort default rate is a measure we use to determine your eligibility to participate in various Title IV, HEA programs. We may also use it for determining your eligibility for exemptions, such as those for certain disbursement requirements under the FFEL and Direct Loan Programs. This subpart applies solely to cohorts, as defined in §§ 668.182(a) and 668.183(b), for fiscal years through 2011. For these cohorts, this subpart describes how cohort default rates are calculated, some of the consequences of cohort default rates, and how you may request changes to your cohort default rates or appeal their consequences. Under this subpart, you submit a ''challenge'' after you receive your draft cohort default rate, and you request an ''adjustment'' or ''appeal'' after your official cohort default rate is published.

(b) *Cohort Default Rates.* Notwithstanding anything to the contrary in this subpart, we will issue annually two sets of draft and official cohort default rates for fiscal years 2009, 2010, and 2011. For each of these years, you will receive one set of draft and official cohort default rates under this subpart and another set of draft and official cohort default rates under subpart N of this part.

(Approved by the Office of Management and Budget under control number 1845–0022)

Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.

§ 668.183 [Amended]

■ 8. Section 668.183(c)(1) is amended by:

■ (A) Removing the word ''or'' at the end of paragraph (c)(1)(ii);

■ (B) Removing the period at the end of paragraph (c)(1)(iii) and adding a colon followed by the word ''or'';

■ (C) Adding a new paragraph (iv).

The addition reads as follows:

§ 668.183 Calculating and applying cohort default rates.

* * * * *

(c) * * *

(iv) Before the end of the following fiscal year, the borrower fails to make an installment payment, when due, on a Federal Stafford Loan that is held by the Secretary or a Federal Consolidation Loan that is held by the Secretary and was used to repay a Federal Stafford Loan, if such Federal Stafford Loan or Federal Consolidation Loan was used to include the borrower in the cohort, and the borrower's failure persists for 360 days.

* * * * *

§ 668.184 [Amended]

■ 9. Section 668.184(a)(1) is amended by removing the word ''If'' and adding, in its place, the words ''Except as provided under 34 CFR 600.32(d), if''.

■ 10. Section 668.185(a)(3) is revised to read as follows:

§ 668.185 Draft cohort default rates and your ability to challenge before official cohort default rates are issued.

(a) * * *

(3) Your draft cohort default rate and the loan record detail report are not considered public information and may not be otherwise voluntarily released to the public by a data manager.

* * * * *

■ 11. Section 668.186 is revised to read as follows:

§ 668.186 Notice of your official cohort default rate.

(a) We electronically notify you of your cohort default rate after we calculate it, by sending you an eCDR notification package to the destination point you designate. After we send our notice to you, we publish a list of cohort default rates calculated under this subpart for all institutions.

(b) If you have one or more borrowers entering repayment or are subject to sanctions, or if the Department believes you will have an official cohort default rate calculated as an average rate, you will receive a loan record detail report as part of your eCDR notification package.

(c) You have five business days, from the transmission date for eCDR notification packages as posted on the Department's Web site, to report any problem with receipt of the electronic transmission of your eCDR notification package.

(d) Except as provided in paragraph (e) of this section, timelines for submitting challenges, adjustments, and appeals begin on the sixth business day following the transmission date for eCDR notification packages that is posted on the Department's Web site.

(e) If you timely report a problem with the receipt of the electronic transmission of your eCDR notification package under paragraph (c) of this section and the Department agrees that the problem with transmission was not caused by you, the Department will extend the challenge, appeal and adjustment deadlines and timeframes to account for a retransmission of your eCDR notification package after the technical problem is resolved.

(Approved by the Office of Management and Budget under control number 1845–0022)

Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.

■ 12. Section 668.187 is revised to read as follows:

§ 668.187 Consequences of cohort default rates on your ability to participate in Title IV, HEA programs.

(a) *End of participation.* (1) Except as provided in paragraph (e) of this section, you lose your eligibility to participate in the FFEL and Direct Loan programs 30 days after you receive our notice that your most recent cohort default rate is greater than 40 percent.

(2) Except as provided in paragraphs (d) and (e) of this section, you lose your eligibility to participate in the FFEL, Direct Loan, and Federal Pell Grant programs 30 days after you receive our notice that your three most recent cohort default rates are each 25 percent or greater.

(b) *Length of period of ineligibility.* Your loss of eligibility under this section continues—

(1) For the remainder of the fiscal year in which we notify you that you are subject to a loss of eligibility; and

(2) For the next 2 fiscal years.

(c) *Using a cohort default rate more than once.* The use of a cohort default rate as a basis for a loss of eligibility under this section does not preclude its use as a basis for—

(1) Any concurrent or subsequent loss of eligibility under this section; or

(2) Any other action by us.

(d) *Continuing participation in Pell.* If you are subject to a loss of eligibility under paragraph (a)(2) of this section, based on three cohort default rates of 25 percent or greater, you may continue to participate in the Federal Pell Grant Program if we determine that you—

(1) Were ineligible to participate in the FFEL and Direct Loan programs before October 7, 1998, and your eligibility was not reinstated;

(2) Requested in writing, before October 7, 1998, to withdraw your participation in the FFEL and Direct Loan programs, and you were not later reinstated; or

(3) Have not certified an FFELP loan or originated a Direct Loan Program loan on or after July 7, 1998.

(e) *Requests for adjustments and appeals.* (1) A loss of eligibility under this section does not take effect while your request for adjustment or appeal, as listed in § 668.189(a), is pending, provided your request for adjustment or appeal is complete, timely, accurate, and in the required format.

(2) Eligibility continued under paragraph (e)(1) of this section ends if we determine that none of the requests for adjustments and appeals you have submitted qualify you for continued eligibility under § 668.189. Loss of eligibility takes effect on the date that you receive notice of our determination on your last pending request for adjustment or appeal.

(3) You do not lose eligibility under this section if we determine that your request for adjustment or appeal meets all requirements of this subpart and qualifies you for continued eligibility under § 668.189.

(4) To avoid liabilities you might otherwise incur under paragraph (f) of this section, you may choose to suspend your participation in the FFEL and Direct Loan programs during the adjustment or appeal process.

(f) *Liabilities during the adjustment or appeal process.* If you continued to participate in the FFEL or Direct Loan Program under paragraph (e)(1) of this section, and we determine that none of your requests for adjustments or appeals qualify you for continued eligibility—

(1) For any FFEL or Direct Loan Program loan that you certified and delivered or originated and disbursed more than 30 days after you received the notice of your cohort default rate, we estimate the amount of interest, special allowance, reinsurance, and any related or similar payments we make or are obligated to make on those loans;

(2) We exclude from this estimate any amount attributable to funds that you delivered or disbursed more than 45 days after you submitted your completed appeal to us;

(3) We notify you of the estimated amount; and

(4) Within 45 days after you receive our notice of the estimated amount, you must pay us that amount, unless—

(i) You file an appeal under the procedures established in subpart H of this part (for the purposes of subpart H of this part, our notice of the estimate is considered to be a final program review determination); or

(ii) We permit a longer repayment period.

(g) *Regaining eligibility.* If you lose your eligibility to participate in a program under this section, you may not participate in that program until—

(1) The period described in paragraph (b) of this section has ended;

(2) You pay any amount owed to us under this section or are meeting that obligation under an agreement acceptable to us;

(3) You submit a new application for participation in the program;

(4) We determine that you meet all of the participation requirements in effect at the time of your application; and

(5) You and we enter into a new program participation agreement.

(Approved by the Office of Management and Budget under control number 1845–0022)

Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.

■ 13. In § 668.188, the introductory text in paragraph (a) is revised to read as follows:

§ 668.188 Preventing evasion of the consequences of cohort default rates.

(a) *General.* You are subject to a loss of eligibility that has already been imposed against another institution as a result of cohort default rates if—

* * * * *

■ 14. Section 668.190 is revised to read as follows:

§ 668.190 Uncorrected data adjustments.

(a) *Eligibility.* You may request an uncorrected data adjustment for your most recent cohort of borrowers, used to calculate your most recent official cohort default rate, if in response to your challenge under § 668.185(b), a data manager agreed correctly to change the data, but the changes are not reflected in your official cohort default rate.

(b) *Deadlines for requesting an uncorrected data adjustment.* You must send us a request for an uncorrected data adjustment, including all supporting documentation, within 30 days after you receive your loan record detail report from us.

(c) *Determination.* We recalculate your cohort default rate, based on the corrected data, and electronically correct the rate that is publicly released, if we determine that—

(1) In response to your challenge under § 668.185(b), a data manager agreed to change the data;

(2) The changes described in paragraph (c)(1) of this section are not reflected in your official cohort default rate; and

(3) We agree that the data are incorrect.

(Approved by the Office of Management and Budget under control number 1845–0022)

Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.

■ 15. Section 668.191 is revised to read as follows:

§ 668.191 New data adjustments.

(a) *Eligibility.* You may request a new data adjustment for your most recent cohort of borrowers, used to calculate your most recent official cohort default rate, if—

(1) A comparison of the loan record detail reports that we provide to you for the draft and official cohort default rates shows that the data have been newly included, excluded, or otherwise changed; and

(2) You identify errors in the data described in paragraph (a)(1) of this section that are confirmed by the data manager.

(b) *Deadlines for requesting a new data adjustment.* (1) You must send to the relevant data manager, or data managers, and us a request for a new data adjustment, including all supporting documentation, within 15 days after you receive your loan record detail report from us.

(2) Within 20 days after receiving your request for a new data adjustment, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager's position.

(3) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for a new data adjustment for that loan. We respond to your request as set forth under paragraph (b)(2) of this section.

(4) Within 15 days after receiving incomplete or illegible records or data from a data manager, you must send a request for replacement records or clarification of data to the data manager and us.

(5) Within 20 days after receiving your request for replacement records or clarification of data, the data manager must—

(i) Replace the missing or illegible records;

(ii) Provide clarifying information; or

(iii) Notify you and us that no clarifying information or additional or improved records are available.

(6) You must send us your completed request for a new data adjustment, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request or requests; or

(ii) If you are also filing an erroneous data appeal or a loan servicing appeal, by the latest of the filing dates required in paragraph (b)(6)(i) of this section or in § 668.192(b)(6)(i) or § 668.193(c)(10)(i).

(c) *Determination.* If we determine that incorrect data were used to calculate your cohort default rate, we recalculate your cohort default rate based on the correct data and electronically correct the rate that is publicly released.

(Approved by the Office of Management and Budget under control number 1845–0022)

Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.

■ 16. Section 668.192 is amended by:

■ (A) In paragraph (b)(6)(ii), removing the reference § 668.191(b)(7)(i) and adding, in its place, § 668.191(b)(6)(i).

■ (B) Revising paragraph (c).

The revision reads as follows:

§ 668.192 Erroneous data appeals.

* * * * *

(c) *Determination.* If we determine that incorrect data were used to calculate your cohort default rate, we recalculate your cohort default rate based on the correct data and electronically correct the rate that is publicly released.

* * * * *

■ 17. Section 668.193 is amended by:

■ (A) In paragraph (c)(10)(ii), removing the reference § 668.191(b)(7)(i) and adding, in its place, § 668.191(b)(6)(i).

■ (B) Revising paragraph (f)(2).

The revision reads as follows:

§ 668.193 Loan servicing appeals.

* * * * *

(f) * * *

(2) Based on our determination, we use a statistically valid methodology to exclude the corresponding percentage of borrowers from both the numerator and denominator of the calculation of your cohort default rate, and electronically correct the rate that is publicly released.

* * * * *

■ 18. Section 668.196(c) is revised to read as follows:

§ 668.196 Average rates appeals.

* * * * *

(c) *Determination.* You do not lose eligibility under § 668.187 if we determine that you meet the requirements for an average rates appeal.

* * * * *

§ 668.198 [Removed]

■ 19. Section 668.198 is removed.

Subpart M—[Amended]

■ 20. Subpart M of Part 668 is amended by removing appendices A and B.

■ 21. Add a new subpart N to Part 668 to read as follows:

Subpart N—Cohort Default Rates

Sec.

Subpart N—Cohort Default Rates

§ 668.200 Purpose of this subpart.

(a) *General.* Your cohort default rate is a measure we use to determine your eligibility to participate in various Title IV, HEA programs. We may also use it for determining your eligibility for exemptions, such as those for certain disbursement requirements under the FFEL and Direct Loan Programs. This subpart applies solely to cohorts, as defined in §§ 668.201(a) and 668.202(b), for fiscal years 2009 and later. For these cohorts, this subpart describes how cohort default rates are calculated, some of the consequences of cohort default rates, and how you may request changes to your cohort default rates or appeal their consequences. Under this subpart, you submit a ''challenge'' after you receive your draft cohort default rate, and you request an ''adjustment'' or ''appeal'' after your official cohort default rate is published.

(b) *Cohort Default Rates.* Notwithstanding anything to the contrary in this subpart, we will issue annually two sets of draft and official cohort default rates for fiscal years 2009, 2010, and 2011. For each of these years, you will receive one set of draft and official cohort default rates under this subpart and another set of draft and official cohort default rates under subpart M of this part.

Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.

§ 668.201 Definitions of terms used in this subpart.

We use the following definitions in this subpart:

(a) *Cohort.* Your cohort is a group of borrowers used to determine your cohort default rate. The method for identifying the borrowers in a cohort is provided in § 668.202(b).

(b) *Data manager.* (1) For FFELP loans held by a guaranty agency or lender, the guaranty agency is the data manager.

(2) For FFELP loans that we hold, we are the data manager.

(3) For Direct Loan Program loans, the Direct Loan Servicer, as defined in 34 CFR 685.102, is the data manager.

(c) *Days.* In this subpart, ''days'' means calendar days.

(d) *Default.* A borrower is considered to be in default for cohort default rate purposes under the rules in § 668.202(c).

(e) *Draft cohort default rate.* Your draft cohort default rate is a rate we issue, for your review, before we issue your official cohort default rate. A draft cohort default rate is used only for the purposes described in § 668.204.

(f) *Entering repayment.* (1) Except as provided in paragraphs (f)(2) and (f)(3) of this section, loans are considered to enter repayment on the dates described in 34 CFR 682.200 (under the definition of ''repayment period'') and in 34 CFR 685.207.

(2) A Federal SLS loan is considered to enter repayment—

(i) At the same time the borrower's Federal Stafford loan enters repayment, if the borrower received the Federal SLS loan and the Federal Stafford loan during the same period of continuous enrollment; or

(ii) In all other cases, on the day after the student ceases to be enrolled at an institution on at least a half-time basis in an educational program leading to a degree, certificate, or other recognized educational credential.

(3) For the purposes of this subpart, a loan is considered to enter repayment on the date that a borrower repays it in full, if the loan is paid in full before the loan enters repayment under paragraphs (f)(1) or (f)(2) of this section.

(g) *Fiscal year.* A fiscal year begins on October 1 and ends on the following September 30. A fiscal year is identified by the calendar year in which it ends.

(h) *Loan record detail report.* The loan record detail report is a report that we produce. It contains the data used to calculate your draft or official cohort default rate.

(i) *Official cohort default rate.* Your official cohort default rate is the cohort default rate that we publish for you under § 668.205. Cohort default rates calculated under this subpart are not related in any way to cohort default rates that are calculated for the Federal Perkins Loan Program.

(j) *We.* We are the Department, the Secretary, or the Secretary's designee.

(k) *You.* You are an institution.

Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.

§ 668.202 Calculating and applying cohort default rates.

(a) *General.* This section describes the four steps that we follow to calculate and apply your cohort default rate for a fiscal year:

(1) First, under paragraph (b) of this section, we identify the borrowers in your cohort for the fiscal year. If the total number of borrowers in that cohort is fewer than 30, we also identify the borrowers in your cohorts for the 2 most recent prior fiscal years.

(2) Second, under paragraph (c) of this section, we identify the borrowers in the cohort (or cohorts) who are considered to be in default by the end of the second fiscal year following the fiscal year those borrowers entered repayment. If more than one cohort will be used to calculate your cohort default rate, we identify defaulted borrowers separately for each cohort.

(3) Third, under paragraph (d) of this section, we calculate your cohort default rate.

(4) Fourth, we apply your cohort default rate to all of your locations—

(i) As you exist on the date you receive the notice of your official cohort default rate; and

(ii) From the date on which you receive the notice of your official cohort default rate until you receive our notice that the cohort default rate no longer applies.

(b) *Identify the borrowers in a cohort.* (1) Except as provided in paragraph (b)(3) of this section, your cohort for a fiscal year consists of all of your current and former students who, during that fiscal year, entered repayment on any Federal Stafford loan, Federal SLS loan, Direct Subsidized loan, or Direct Unsubsidized loan that they received to attend your institution, or on the portion of a loan made under the Federal Consolidation Loan Program or the Federal Direct Consolidation Loan Program (as defined in 34 CFR 685.102) that is used to repay those loans.

(2) A borrower may be included in more than one of your cohorts and may be included in the cohorts of more than one institution in the same fiscal year.

(3) A TEACH Grant that has been converted to a Federal Direct Unsubsidized Loan is not considered for the purpose of calculating and applying cohort default rates.

(c) *Identify the borrowers in a cohort who are in default.* (1) Except as provided in paragraph (c)(2) of this section, a borrower in a cohort for a fiscal year is considered to be in default if, before the end of the second fiscal year following the fiscal year the borrower entered repayment—

(i) The borrower defaults on any FFELP loan that was used to include the borrower in the cohort or on any Federal Consolidation Loan Program loan that repaid a loan that was used to include the borrower in the cohort (however, a borrower is not considered to be in default unless a claim for insurance has been paid on the loan by a guaranty agency or by us);

(ii) The borrower fails to make an installment payment, when due, on any Direct Loan Program loan that was used to include the borrower in the cohort or on any Federal Direct Consolidation Loan Program loan that repaid a loan that was used to include the borrower

in the cohort, and the borrower's failure persists for 360 days (or for 270 days, if the borrower's first day of delinquency was before October 7, 1998);

(iii) You or your owner, agent, contractor, employee, or any other affiliated entity or individual make a payment to prevent a borrower's default on a loan that is used to include the borrower in that cohort; or

(iv) The borrower fails to make an installment payment, when due, on a Federal Stafford Loan that is held by the Secretary or a Federal Consolidation Loan that is held by the Secretary and that was used to repay a Federal Stafford Loan, if such Federal Stafford Loan or Federal Consolidation was used to include the borrower in the cohort, and the borrower's failure persists for 360 days.

(2) A borrower is not considered to be in default based on a loan that is, before the end of the second fiscal year following the fiscal year in which it entered repayment—

(i) Rehabilitated under 34 CFR 682.405 or 34 CFR 685.211(e); or

(ii) Repurchased by a lender because the claim for insurance was submitted or paid in error.

(d) Calculate the cohort default rate. Except as provided in § 668.203, if there are—

(1)(i) Thirty or more borrowers in your cohort for a fiscal year, your cohort default rate is the percentage that is calculated by—

(ii) Dividing the number of borrowers in the cohort who are in default, as determined under paragraph (c) of this section by the number of borrowers in the cohort, as determined under paragraph (b) of this section.

(2)(i) Fewer than 30 borrowers in your cohort for a fiscal year, your cohort default rate is the percentage that is calculated by—

(ii) Dividing the total number of borrowers in that cohort and in the two most recent prior cohorts who are in default, as determined for each cohort under paragraph (c) of this section by the total number of borrowers in that cohort and the two most recent prior cohorts, as determined for each cohort under paragraph (b) of this section.

Authority: 20 U.S.C. 1070g, 1082, 1085, 1094, 1099c.

§ 668.203 Determining cohort default rates for institutions that have undergone a change in status.

(a) *General.* (1) Except as provided under 34 CFR 600.32(d), if you undergo a change in status identified in this section, your cohort default rate is determined under this section.

(2) In determining cohort default rates under this section, the date of a merger, acquisition, or other change in status is the date the change occurs.

(3) A change in status may affect your eligibility to participate in Title IV, HEA programs under § 668.206 or § 668.207.

(4) If another institution's cohort default rate is applicable to you under this section, you may challenge, request an adjustment, or submit an appeal for the cohort default rate under the same requirements that would be applicable to the other institution under §§ 668.204 and 668.208.

(b) *Acquisition or merger of institutions.* If your institution acquires, or was created by the merger of, one or more institutions that participated independently in the Title IV, HEA programs immediately before the acquisition or merger—

(1) For the cohort default rates published before the date of the acquisition or merger, your cohort default rates are the same as those of your predecessor that had the highest total number of borrowers entering repayment in the two most recent cohorts used to calculate those cohort default rates; and

(2) Beginning with the first cohort default rate published after the date of the acquisition or merger, your cohort default rates are determined by including the applicable borrowers from each institution involved in the acquisition or merger in the calculation under § 668.202.

(c) *Acquisition of branches or locations.* If you acquire a branch or a location from another institution participating in the Title IV, HEA programs—

(1) The cohort default rates published for you before the date of the change apply to you and to the newly acquired branch or location;

(2) Beginning with the first cohort default rate published after the date of the change, your cohort default rates for the next 3 fiscal years are determined by including the applicable borrowers from your institution and the other institution (including all of its locations) in the calculation under § 668.202;

(3) After the period described in paragraph (c)(2) of this section, your cohort default rates do not include borrowers from the other institution in the calculation under § 668.202; and

(4) At all times, the cohort default rate for the institution from which you acquired the branch or location is not affected by this change in status.

(d) *Branches or locations becoming institutions.* If you are a branch or location of an institution that is participating in the Title IV, HEA programs, and you become a separate, new institution for the purposes of participating in those programs—

(1) The cohort default rates published before the date of the change for your former parent institution are also applicable to you;

(2) Beginning with the first cohort default rate published after the date of the change, your cohort default rates for the next 3 fiscal years are determined by including the applicable borrowers from your institution and your former parent institution (including all of its locations) in the calculation under § 668.202; and

(3) After the period described in paragraph (d)(2) of this section, your cohort default rates do not include borrowers from your former parent institution in the calculation under § 668.202.

Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.

§ 668.204 Draft cohort default rates and your ability to challenge before official cohort default rates are issued.

(a) *General.* (1) We notify you of your draft cohort default rate before your official cohort default rate is calculated. Our notice includes the loan record detail report for the draft cohort default rate.

(2) Regardless of the number of borrowers included in your cohort, your draft cohort default rate is always calculated using data for that fiscal year alone, using the method described in § 668.202(d)(1).

(3) Your draft cohort default rate and the loan record detail report are not considered public information and may not be otherwise voluntarily released to the public by a data manager.

(4) Any challenge you submit under this section and any response provided by a data manager must be in a format acceptable to us. This acceptable format is described in the ''Cohort Default Rate Guide'' that we provide to you. If your challenge does not comply with the requirements in the ''Cohort Default Rate Guide,'' we may deny your challenge.

(b) *Incorrect data challenges.* (1) You may challenge the accuracy of the data included on the loan record detail report by sending a challenge to the relevant data manager, or data managers, within 45 days after you receive the data. Your challenge must include—

(i) A description of the information in the loan record detail report that you believe is incorrect; and

(ii) Documentation that supports your contention that the data are incorrect.

(2) Within 30 days after receiving your challenge, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation that supports the data manager's position.

(3) If your data manager concludes that draft data in the loan record detail report are incorrect, and we agree, we use the corrected data to calculate your cohort default rate.

(4) If you fail to challenge the accuracy of data under this section, you cannot contest the accuracy of those data in an uncorrected data adjustment, under § 668.209, or in an erroneous data appeal, under § 668.211.

(c) *Participation rate index challenges.* (1)(i) You may challenge an anticipated loss of eligibility under § 668.206(a)(1), based on one cohort default rate over 40 percent, if your participation rate index for that cohort's fiscal year is equal to or less than 0.06015.

(ii) You may challenge an anticipated loss of eligibility under § 668.206(a)(2), based on three cohort default rates of 30 percent or greater, if your participation rate index is equal to or less than 0.0625 for any of those three cohorts' fiscal years.

(iii) You may challenge a potential placement on provisional certification under § 668.16(m)(2)(i), based on two cohort default rates that fail to satisfy the standard of administrative capability in § 668.16(m)(1)(ii), if your participation rate index is equal to or less than 0.0625 for either of the two cohorts' fiscal years.

(2) For a participation rate index challenge, your participation rate index is calculated as described in § 668.214(b), except that—

(i) The draft cohort default rate is considered to be your most recent cohort default rate; and

(ii) If the cohort used to calculate your draft cohort default rate included fewer than 30 borrowers, you may calculate your participation rate index for that fiscal year using either your most recent draft cohort default rate or the average rate that would be calculated for that fiscal year, using the method described in § 668.202(d)(2).

(3) You must send your participation rate index challenge, including all supporting documentation, to us within 45 days after you receive your draft cohort default rate.

(4) We notify you of our determination on your participation rate index challenge before your official cohort default rate is published.

(5) If we determine that you qualify for continued eligibility or full certification based on your participation rate index challenge, you will not lose eligibility under § 668.206 or be placed on provisional certification under § 668.16(m)(2)(i) when your next official cohort default rate is published. A successful challenge that is based on your draft cohort default rate does not excuse you from any other loss of eligibility or placement on provisional certification. However, if your successful challenge under paragraph (c)(1)(ii) or (c)(1)(iii) of this section is based on a prior, official cohort default rate, and not on your draft cohort default rate, we also excuse you from any subsequent loss of eligibility, under § 668.206(a)(2) or placement on provisional certification, under § 668.16(m)(2)(i), that would be based on that official cohort default rate.

Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.

§ 668.205 Notice of your official cohort default rate.

(a) We electronically notify you of your cohort default rate after we calculate it, by sending you an eCDR notification package to the destination point you designate. After we send our notice to you, we publish a list of cohort default rates for all institutions.

(b) If you had one or more borrowers entering repayment in the fiscal year for which the rate is calculated, or are subject to sanctions, or if the Department believes you will have an official cohort default rate calculated as an average rate, you will receive a loan record detail report as part of your eCDR notification package.

(c) You have five business days, from the transmission date for eCDR notification packages as posted on the Department's Web site, to report any problem with receipt of the electronic transmission of your eCDR notification package.

(d) Except as provided in paragraph (e) of this section, timelines for submitting challenges, adjustments, and appeals begin on the sixth business day following the transmission date for eCDR notification packages that is posted on the Department's Web site.

(e) If you timely report a problem with transmission of your eCDR notification package under paragraph (c) of this section and the Department agrees that the problem with transmission was not caused by you, the Department will extend the challenge, appeal and adjustment deadlines and timeframes to account for a retransmission of your eCDR notification package after the technical problem is resolved.

Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.

§ 668.206 Consequences of cohort default rates on your ability to participate in Title IV, HEA programs.

(a) *End of participation.* (1) Except as provided in paragraph (e) of this section, you lose your eligibility to participate in the FFEL and Direct Loan programs 30 days after you receive our notice that your most recent cohort default rate for fiscal year 2011 or later is greater than 40 percent.

(2) Except as provided in paragraphs (d) and (e) of this section, you lose your eligibility to participate in the FFEL, Direct Loan, and Federal Pell Grant programs 30 days after you receive our notice that your three most recent cohort default rates are each 30 percent or greater.

(b) *Length of period of ineligibility.* Your loss of eligibility under this section continues—

(1) For the remainder of the fiscal year in which we notify you that you are subject to a loss of eligibility; and

(2) For the next 2 fiscal years.

(c) *Using a cohort default rate more than once.* The use of a cohort default rate as a basis for a loss of eligibility under this section does not preclude its use as a basis for—

(1) Any concurrent or subsequent loss of eligibility under this section; or

(2) Any other action by us.

(d) *Continuing participation in Pell.* If you are subject to a loss of eligibility under paragraph (a)(2) of this section, based on three cohort default rates of 30 percent or greater, you may continue to participate in the Federal Pell Grant Program if we determine that you—

(1) Were ineligible to participate in the FFEL and Direct Loan programs before October 7, 1998, and your eligibility was not reinstated;

(2) Requested in writing, before October 7, 1998, to withdraw your participation in the FFEL and Direct Loan programs, and you were not later reinstated; or

(3) Have not certified an FFELP loan or originated a Direct Loan Program loan on or after July 7, 1998.

(e) *Requests for adjustments and appeals.* (1) A loss of eligibility under this section does not take effect while your request for adjustment or appeal, as listed in § 668.208(a), is pending, provided your request for adjustment or appeal is complete, timely, accurate, and in the required format.

(2) Eligibility continued under paragraph (e)(1) of this section ends if we determine that none of the requests for adjustments and appeals you have submitted qualify you for continued eligibility under § 668.208. Loss of eligibility takes effect on the date that you receive notice of our determination

on your last pending request for adjustment or appeal.

(3) You do not lose eligibility under this section if we determine that your request for adjustment or appeal meets all requirements of this subpart and qualifies you for continued eligibility under § 668.208.

(4) To avoid liabilities you might otherwise incur under paragraph (f) of this section, you may choose to suspend your participation in the FFEL and Direct Loan programs during the adjustment or appeal process.

(f) *Liabilities during the adjustment or appeal process.* If you continued to participate in the FFEL or Direct Loan Program under paragraph (e)(1) of this section, and we determine that none of your requests for adjustments or appeals qualify you for continued eligibility—

(1) For any FFEL or Direct Loan Program loan that you certified and delivered or originated and disbursed more than 30 days after you received the notice of your cohort default rate, we estimate the amount of interest, special allowance, reinsurance, and any related or similar payments we make or are obligated to make on those loans;

(2) We exclude from this estimate any amount attributable to funds that you delivered or disbursed more than 45 days after you submitted your completed appeal to us;

(3) We notify you of the estimated amount; and

(4) Within 45 days after you receive our notice of the estimated amount, you must pay us that amount, unless—

(i) You file an appeal under the procedures established in subpart H of this part (for the purposes of subpart H of this part, our notice of the estimate is considered to be a final program review determination); or

(ii) We permit a longer repayment period.

(g) *Regaining eligibility.* If you lose your eligibility to participate in a program under this section, you may not participate in that program until—

(1) The period described in paragraph (b) of this section has ended;

(2) You pay any amount owed to us under this section or are meeting that obligation under an agreement acceptable to us;

(3) You submit a new application for participation in the program;

(4) We determine that you meet all of the participation requirements in effect at the time of your application; and

(5) You and we enter into a new program participation agreement.

Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.

§ 668.207 Preventing evasion of the consequences of cohort default rates.

(a) *General.* You are subject to a loss of eligibility that has already been imposed against another institution as a result of cohort default rates if—

(1) You and the ineligible institution are both parties to a transaction that results in a change of ownership, a change in control, a merger, a consolidation, an acquisition, a change of name, a change of address, any change that results in a location becoming a freestanding institution, a purchase or sale, a transfer of assets, an assignment, a change of identification number, a contract for services, an addition or closure of one or more locations or branches or educational programs, or any other change in whole or in part in institutional structure or identity;

(2) Following the change described in paragraph (a)(1) of this section, you offer an educational program at substantially the same address at which the ineligible institution had offered an educational program before the change; and

(3) There is a commonality of ownership or management between you and the ineligible institution, as the ineligible institution existed before the change.

(b) *Commonality of ownership or management.* For the purposes of this section, a commonality of ownership or management exists if, at each institution, the same person (as defined in 34 CFR 600.31) or members of that person's family, directly or indirectly—

(1) Holds or held a managerial role; or

(2) Has or had the ability to affect substantially the institution's actions, within the meaning of 34 CFR 600.21.

(c) *Teach-outs.* Notwithstanding paragraph (b)(1) of this section, a commonality of management does not exist if you are conducting a teach-out under a teach-out agreement as defined in 34 CFR 602.3 and administered in accordance with 34 CFR 602.24(c), and—

(1)(i) Within 60 days after the change described in this section, you send us the names of the managers for each facility undergoing the teach-out as it existed before the change and for each facility as it exists after you believe that the commonality of management has ended; and

(ii) We determine that the commonality of management, as described in paragraph (b)(1) of this section, has ended; or

(2)(i) Within 30 days after you receive our notice that we have denied your submission under paragraph (c)(1)(i) of this section, you make the management changes we request and send us a list of the names of the managers for each facility undergoing the teach-out as it exists after you make those changes; and

(ii) We determine that the commonality of management, as described in paragraph (b)(1) of this section, has ended.

(d) *Initial determination.* We encourage you to contact us before undergoing a change described in this section. If you write to us, providing the information we request, we will provide a written initial determination of the anticipated change's effect on your eligibility.

(e) *Notice of accountability.* (1) We notify you in writing if, in response to your notice or application filed under 34 CFR 600.20 or 600.21, we determine that you are subject to a loss of eligibility, under paragraph (a) of this section, that has been imposed against another institution.

(2) Our notice also advises you of the scope and duration of your loss of eligibility. The loss of eligibility applies to all of your locations from the date you receive our notice until the expiration of the period of ineligibility applicable to the other institution.

(3) If you are subject to a loss of eligibility under this section that has already been imposed against another institution, you may only request an adjustment or submit an appeal for the loss of eligibility under the same requirements that would be applicable to the other institution under § 668.208.

Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.

§ 668.208 General requirements for adjusting official cohort default rates and for appealing their consequences.

(a) *Remaining eligible.* You do not lose eligibility under § 668.206 if—

(1) We recalculate your cohort default rate, and it is below the percentage threshold for the loss of eligibility as the result of—

(i) An uncorrected data adjustment submitted under this section and § 668.209;

(ii) A new data adjustment submitted under this section and § 668.210;

(iii) An erroneous data appeal submitted under this section and § 668.211; or

(iv) A loan servicing appeal submitted under this section and § 668.212; or

(2) You meet the requirements for—

(i) An economically disadvantaged appeal submitted under this section and § 668.213;

(ii) A participation rate index appeal submitted under this section and § 668.214;

(iii) An average rates appeal submitted under this section and § 668.215; or

(iv) A thirty-or-fewer borrowers appeal submitted under this section and § 668.216.

(b) *Limitations on your ability to dispute your cohort default rate.* (1) You may not dispute the calculation of a cohort default rate except as described in this subpart or in § 668.16(m)(2).

(2) You may not request an adjustment or appeal a cohort default rate, under § 668.209, § 668.210, § 668.211, or § 668.212, more than once.

(3) You may not request an adjustment or appeal a cohort default rate, under § 668.209, § 668.210, § 668.211, or § 668.212, if you previously lost your eligibility to participate in a Title IV, HEA program, under § 668.206, or were placed on provisional certification under § 668.16(m)(2)(i), based entirely or partially on that cohort default rate.

(c) *Content and format of requests for adjustments and appeals.* We may deny your request for adjustment or appeal if it does not meet the following requirements:

(1) All appeals, notices, requests, independent auditor's opinions, management's written assertions, and other correspondence that you are required to send under this subpart must be complete, timely, accurate, and in a format acceptable to us. This acceptable format is described in the ''Cohort Default Rate Guide'' that we provide to you.

(2) Your completed request for adjustment or appeal must include—

(i) All of the information necessary to substantiate your request for adjustment or appeal; and

(ii) A certification by your chief executive officer, under penalty of perjury, that all the information you provide is true and correct.

(d) *Our copies of your correspondence.* Whenever you are required by this subpart to correspond with a party other than us, you must send us a copy of your correspondence within the same time deadlines. However, you are not required to send us copies of documents that you received from us originally.

(e) *Requirements for data managers' responses.* (1) Except as otherwise provided in this subpart, if this subpart requires a data manager to correspond with any party other than us, the data manager must send us a copy of the correspondence within the same time deadlines.

(2) If a data manager sends us correspondence under this subpart that is not in a format acceptable to us, we may require the data manager to revise that correspondence's format, and we may prescribe a format for that data manager's subsequent correspondence with us.

(f) *Our decision on your request for adjustment or appeal.* (1) We determine whether your request for an adjustment or appeal is in compliance with this subpart.

(2) In making our decision for an adjustment, under § 668.209 or § 668.210, or an appeal, under § 668.211 or § 668.212—

(i) We presume that the information provided to you by a data manager is correct unless you provide substantial evidence that shows the information is not correct; and

(ii) If we determine that a data manager did not provide the necessary clarifying information or legible records in meeting the requirements of this subpart, we presume that the evidence that you provide to us is correct unless it is contradicted or otherwise proven to be incorrect by information we maintain.

(3) Our decision is based on the materials you submit under this subpart. We do not provide an oral hearing.

(4) We notify you of our decision—

(i) If you request an adjustment or appeal because you are subject to a loss of eligibility under § 668.206 or potential placement on provisional certification under § 668.16(m)(2)(i) or file an economically disadvantaged appeal under § 668.213(a)(2), within 45 days after we receive your completed request for an adjustment or appeal; or

(ii) In all other cases, except for appeals submitted under § 668.211(a) following placement on provisional certification, before we notify you of your next official cohort default rate.

(5) You may not seek judicial review of our determination of a cohort default rate until we issue our decision on all pending requests for adjustments or appeals for that cohort default rate.

Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.

§ 668.209 Uncorrected data adjustments.

(a) *Eligibility.* You may request an uncorrected data adjustment for your most recent cohort of borrowers, used to calculate your most recent official cohort default rate, if in response to your challenge under § 668.204(b), a data manager agreed correctly to change the data, but the changes are not reflected in your official cohort default rate.

(b) *Deadlines for requesting an uncorrected data adjustment.* You must send us a request for an uncorrected data adjustment, including all supporting documentation, within 30 days after you receive your loan record detail report from us.

(c) *Determination.* We recalculate your cohort default rate, based on the corrected data, and electronically correct the rate that is publicly released if we determine that—

(1) In response to your challenge under § 668.204(b), a data manager agreed to change the data;

(2) The changes described in paragraph (c)(1) of this section are not reflected in your official cohort default rate; and

(3) We agree that the data are incorrect.

(Approved by the Office of Management and Budget under control number 1845–0022)

Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.

§ 668.210 New data adjustments.

(a) *Eligibility.* You may request a new data adjustment for your most recent cohort of borrowers, used to calculate your most recent official cohort default rate, if—

(1) A comparison of the loan record detail reports that we provide to you for the draft and official cohort default rates shows that the data have been newly included, excluded, or otherwise changed; and

(2) You identify errors in the data described in paragraph (a)(1) of this section that are confirmed by the data manager.

(b) *Deadlines for requesting a new data adjustment.* (1) You must send to the relevant data manager, or data managers, and us a request for a new data adjustment, including all supporting documentation, within 15 days after you receive your loan record detail report from us.

(2) Within 20 days after receiving your request for a new data adjustment, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager's position.

(3) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for a new data adjustment for that loan. We respond to your request as set forth under paragraph (b)(2) of this section.

(4) Within 15 days after receiving incomplete or illegible records or data from a data manager, you must send a request for replacement records or clarification of data to the data manager and us.

(5) Within 20 days after receiving your request for replacement records or clarification of data, the data manager must—

(i) Replace the missing or illegible records;

(ii) Provide clarifying information; or

(iii) Notify you and us that no clarifying information or additional or improved records are available.

(6) You must send us your completed request for a new data adjustment, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request or requests; or

(ii) If you are also filing an erroneous data appeal or a loan servicing appeal, by the latest of the filing dates required in paragraph (b)(6)(i) of this section or in § 668.211(b)(6)(i) or § 668.212(c)(10)(i).

(c) *Determination.* If we determine that incorrect data were used to calculate your cohort default rate, we recalculate your cohort default rate based on the correct data and make electronic corrections to the rate that is publicly released.

(Approved by the Office of Management and Budget under control number 1845–0022)

Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.

§ 668.211 Erroneous data appeals.

(a) *Eligibility.* Except as provided in § 668.208(b), you may appeal the calculation of a cohort default rate upon which a loss of eligibility, under § 668.206, or provisional certification, under § 668.16(m), is based if—

(1) You dispute the accuracy of data that you previously challenged on the basis of incorrect data, under § 668.204(b); or

(2) A comparison of the loan record detail reports that we provide to you for the draft and official cohort default rates shows that the data have been newly included, excluded, or otherwise changed, and you dispute the accuracy of that data.

(b) *Deadlines for submitting an appeal.* (1) You must send a request for verification of data errors to the relevant data manager, or data managers, and to us within 15 days after you receive the notice of your loss of eligibility or provisional certification. Your request must include a description of the information in the cohort default rate data that you believe is incorrect and all supporting documentation that demonstrates the error.

(2) Within 20 days after receiving your request for verification of data errors, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager's position.

(3) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for verification of that loan's data errors. Your request must include a description of the information in the cohort default rate data that you believe is incorrect and all supporting documentation that demonstrates the error. We respond to your request as set forth under paragraph (b)(2) of this section.

(4) Within 15 days after receiving incomplete or illegible records or data, you must send a request for replacement records or clarification of data to the data manager and us.

(5) Within 20 days after receiving your request for replacement records or clarification of data, the data manager must—

(i) Replace the missing or illegible records;

(ii) Provide clarifying information; or

(iii) Notify you and us that no clarifying information or additional or improved records are available.

(6) You must send your completed appeal to us, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request; or

(ii) If you are also requesting a new data adjustment or filing a loan servicing appeal, by the latest of the filing dates required in paragraph (b)(6)(i) of this section or in § 668.210(b)(6)(i) or § 668.212(c)(10)(i).

(c) *Determination.* If we determine that incorrect data were used to calculate your cohort default rate, we recalculate your cohort default rate based on the correct data and electronically correct the rate that is publicly released.

(Approved by the Office of Management and Budget under control number 1845–0022)

Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.

§ 668.212 Loan servicing appeals.

(a) *Eligibility.* Except as provided in § 668.208(b), you may appeal, on the basis of improper loan servicing or collection, the calculation of—

(1) Your most recent cohort default rate; or

(2) Any cohort default rate upon which a loss of eligibility under § 668.206 is based.

(b) *Improper loan servicing.* For the purposes of this section, a default is considered to have been due to improper loan servicing or collection only if the borrower did not make a payment on the loan and you prove that the FFEL Program lender or the Direct Loan Servicer, as defined in 34 CFR 685.102, failed to perform one or more of the following activities, if that activity applies to the loan:

(1) Send at least one letter (other than the final demand letter) urging the borrower to make payments on the loan.

(2) Attempt at least one phone call to the borrower.

(3) Send a final demand letter to the borrower.

(4) For a Direct Loan Program loan only, document that skip tracing was performed if the Direct Loan Servicer determined that it did not have the borrower's current address.

(5) For an FFELP loan only—

(i) Submit a request for preclaims or default aversion assistance to the guaranty agency; and

(ii) Submit a certification or other documentation that skip tracing was performed to the guaranty agency.

(c) *Deadlines for submitting an appeal.* (1) If the loan record detail report was not included with your official cohort default rate notice, you must request it within 15 days after you receive the notice of your official cohort default rate.

(2) You must send a request for loan servicing records to the relevant data manager, or data managers, and to us within 15 days after you receive your loan record detail report from us. If the data manager is a guaranty agency, your request must include a copy of the loan record detail report.

(3) Within 20 days after receiving your request for loan servicing records, the data manager must—

(i) Send you and us a list of the borrowers in your representative sample, as described in paragraph (d) of this section (the list must be in social security number order, and it must include the number of defaulted loans included in the cohort for each listed borrower);

(ii) Send you and us a description of how your representative sample was chosen; and

(iii) Either send you copies of the loan servicing records for the borrowers in your representative sample and send us a copy of its cover letter indicating that the records were sent, or send you and us a notice of the amount of its fee for providing copies of the loan servicing records.

(4) The data manager may charge you a reasonable fee for providing copies of loan servicing records, but it may not charge more than $10 per borrower file. If a data manager charges a fee, it is not required to send the documents to you until it receives your payment of the fee.

(5) If the data manager charges a fee for providing copies of loan servicing

records, you must send payment in full to the data manager within 15 days after you receive the notice of the fee.

(6) If the data manager charges a fee for providing copies of loan servicing records, and—

(i) You pay the fee in full and on time, the data manager must send you, within 20 days after it receives your payment, a copy of all loan servicing records for each loan in your representative sample (the copies are provided to you in hard copy format unless the data manager and you agree that another format may be used), and it must send us a copy of its cover letter indicating that the records were sent; or

(ii) You do not pay the fee in full and on time, the data manager must notify you and us of your failure to pay the fee and that you have waived your right to challenge the calculation of your cohort default rate based on the data manager's records. We accept that determination unless you prove that it is incorrect.

(7) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for the loan servicing records for that loan. We respond to your request under paragraph (c)(3) of this section.

(8) Within 15 days after receiving incomplete or illegible records, you must send a request for replacement records to the data manager and us.

(9) Within 20 days after receiving your request for replacement records, the data manager must either—

(i) Replace the missing or illegible records; or

(ii) Notify you and us that no additional or improved copies are available.

(10) You must send your appeal to us, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request for loan servicing records; or

(ii) If you are also requesting a new data adjustment or filing an erroneous data appeal, by the latest of the filing dates required in paragraph (c)(10)(i) of this section or in § 668.210(b)(6)(i) or § 668.211(b)(6)(i).

(d) *Representative sample of records.* (1) To select a representative sample of records, the data manager first identifies all of the borrowers for whom it is responsible and who had loans that were considered to be in default in the calculation of the cohort default rate you are appealing.

(2) From the group of borrowers identified under paragraph (d)(1) of this section, the data manager identifies a sample that is large enough to derive an estimate, acceptable at a 95 percent confidence level with a plus or minus 5 percent confidence interval, for use in determining the number of borrowers who should be excluded from the calculation of the cohort default rate due to improper loan servicing or collection.

(e) *Loan servicing records.* Loan servicing records are the collection and payment history records—

(1) Provided to the guaranty agency by the lender and used by the guaranty agency in determining whether to pay a claim on a defaulted loan; or

(2) Maintained by our Direct Loan Servicer that are used in determining your cohort default rate.

(f) *Determination.* (1) We determine the number of loans, included in your representative sample of loan servicing records, that defaulted due to improper loan servicing or collection, as described in paragraph (b) of this section.

(2) Based on our determination, we use a statistically valid methodology to exclude the corresponding percentage of borrowers from both the numerator and denominator of the calculation of your cohort default rate, and electronically correct the rate that is publicly released.

(Approved by the Office of Management and Budget under control number 1845–0022)

Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.

§ 668.213 Economically disadvantaged appeals.

(a) *General.* As provided in this section you may appeal—

(1) A notice of a loss of eligibility under § 668.206; or

(2) A notice of a second successive official cohort default rate calculated under this subpart that is equal to or greater than 30 percent but less than or equal to 40 percent, potentially subjecting you to provisional certification under § 668.16(m)(2)(i).

(b) *Eligibility.* You may appeal under this section if an independent auditor's opinion certifies that your low income rate is two-thirds or more and—

(1) You offer an associate, baccalaureate, graduate, or professional degree, and your completion rate is 70 percent or more; or

(2) You do not offer an associate, baccalaureate, graduate, or professional degree, and your placement rate is 44 percent or more.

(c) *Low income rate.* (1) Your low income rate is the percentage of your students, as described in paragraph (c)(2) of this section, who—

(i) For an award year that overlaps the 12-month period selected under paragraph (c)(2) of this section, have an expected family contribution, as defined in 34 CFR 690.2, that is equal to or less than the largest expected family contribution that would allow a student to receive one-half of the maximum Federal Pell Grant award, regardless of the student's enrollment status or cost of attendance; or

(ii) For a calendar year that overlaps the 12-month period selected under paragraph (c)(2) of this section, have an adjusted gross income that, when added to the adjusted gross income of the student's parents (if the student is a dependent student) or spouse (if the student is a married independent student), is less than the amount listed in the Department of Health and Human Services poverty guidelines for the size of the student's family unit.

(2) The students who are used to determine your low income rate include only students who were enrolled on at least a half-time basis in an eligible program at your institution during any part of a 12-month period that ended during the 6 months immediately preceding the cohort's fiscal year.

(d) *Completion rate.* (1) Your completion rate is the percentage of your students, as described in paragraph (d)(2) of this section, who—

(i) Completed the educational programs in which they were enrolled;

(ii) Transferred from your institution to a higher level educational program;

(iii) Remained enrolled and are making satisfactory progress toward completion of their educational programs at the end of the same 12-month period used to calculate the low income rate; or

(iv) Entered active duty in the Armed Forces of the United States within 1 year after their last date of attendance at your institution.

(2) The students who are used to determine your completion rate include only regular students who were—

(i) Initially enrolled on a full-time basis in an eligible program; and

(ii) Originally scheduled to complete their programs during the same 12-month period used to calculate the low income rate.

(e) *Placement rate.* (1) Except as provided in paragraph (e)(2) of this section, your placement rate is the percentage of your students, as described in paragraphs (e)(3) and (e)(4) of this section, who—

(i) Are employed, in an occupation for which you provided training, on the date following 1 year after their last date of attendance at your institution;

(ii) Were employed for at least 13 weeks, in an occupation for which you provided training, between the date they enrolled at your institution and the first

date that is more than a year after their last date of attendance at your institution; or

(iii) Entered active duty in the Armed Forces of the United States within 1 year after their last date of attendance at your institution.

(2) For the purposes of this section, a former student is not considered to have been employed based on any employment by your institution.

(3) The students who are used to determine your placement rate include only former students who—

(i) Were initially enrolled in an eligible program on at least a half-time basis;

(ii) Were originally scheduled, at the time of enrollment, to complete their educational programs during the same 12-month period used to calculate the low income rate; and

(iii) Remained in the program beyond the point at which a student would have received a 100 percent tuition refund from you.

(4) A student is not included in the calculation of your placement rate if that student, on the date that is 1 year after the student's originally scheduled completion date, remains enrolled in the same program and is making satisfactory progress.

(f) *Scheduled to complete.* In calculating a completion or placement rate under this section, the date on which a student is originally scheduled to complete a program is based on—

(1) For a student who is initially enrolled full-time, the amount of time specified in your enrollment contract, catalog, or other materials for completion of the program by a full-time student; or

(2) For a student who is initially enrolled less than full-time, the amount of time that it would take the student to complete the program if the student remained at that level of enrollment throughout the program.

(g) *Deadline for submitting an appeal.* (1) Within 30 days after you receive the notice of your loss of eligibility, you must send us your management's written assertion, as described in the Cohort Default Rate Guide.

(2) Within 60 days after you receive the notice of your loss of eligibility, you must send us the independent auditor's opinion described in paragraph (h) of this section.

(h) *Independent auditor's opinion.* (1) The independent auditor's opinion must state whether your management's written assertion, as you provided it to the auditor and to us, meets the requirements for an economically disadvantaged appeal and is fairly stated in all material respects.

(2) The engagement that forms the basis of the independent auditor's opinion must be an examination-level compliance attestation engagement performed in accordance with—

(i) The American Institute of Certified Public Accountants' (AICPA) Statement on Standards for Attestation Engagements, Compliance Attestation (AICPA, Professional Standards, vol. 1, AT sec. 500), as amended (these standards may be obtained by calling the AICPA's order department, at 1–888–777–7077); and

(ii) Government Auditing Standards issued by the Comptroller General of the United States.

(i) *Determination.* You do not lose eligibility under § 668.206, and we do not provisionally certify you under § 668.16(m)(2)(i), if—

(1) Your independent auditor's opinion agrees that you meet the requirements for an economically disadvantaged appeal; and

(2) We determine that the independent auditor's opinion and your management's written assertion—

(i) Meet the requirements for an economically disadvantaged appeal; and

(ii) Are not contradicted or otherwise proven to be incorrect by information we maintain, to an extent that would render the independent auditor's opinion unacceptable.

Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.

§ 668.214 Participation rate index appeals.

(a) *Eligibility.* (1) You may appeal a notice of a loss of eligibility under § 668.206(a)(1), based on one cohort default rate over 40 percent, if your participation rate index for that cohort's fiscal year is equal to or less than 0.06015.

(2) You may appeal a notice of a loss of eligibility under § 668.206(a)(2), based on three cohort default rates of 30 percent or greater, if your participation rate index is equal to or less than 0.0625 for any of those three cohorts' fiscal years.

(3) You may appeal potential placement on provisional certification under § 668.16(m)(2)(i) based on two cohort default rates that fail to satisfy the standard of administrative capability in § 668.16(m)(1)(ii) if your participation rate index is equal to or less than 0.0625 for either of the two cohorts' fiscal years.

(b) *Calculating your participation rate index.* (1) Except as provided in paragraph (b)(2) of this section, your participation rate index for a fiscal year is determined by multiplying your cohort default rate for that fiscal year by the percentage that is derived by dividing—

(i) The number of students who received an FFELP or a Direct Loan Program loan to attend your institution during a period of enrollment, as defined in 34 CFR 682.200 or 685.102, that overlaps any part of a 12-month period that ended during the 6 months immediately preceding the cohort's fiscal year, by

(ii) The number of regular students who were enrolled at your institution on at least a half-time basis during any part of the same 12-month period.

(2) If your cohort default rate for a fiscal year is calculated as an average rate under § 668.202(d)(2), you may calculate your participation rate index for that fiscal year using either that average rate or the cohort default rate that would be calculated for the fiscal year alone using the method described in § 668.202(d)(1).

(c) *Deadline for submitting an appeal.* You must send us your appeal under this section, including all supporting documentation, within 30 days after you receive—

(1) Notice of your loss of eligibility; or

(2) Notice of a second cohort default rate that equals or exceeds 30 percent but is less than or equal to 40 percent and that, in combination with an earlier rate, potentially subjects you to provisional certification under § 668.16(m)(2)(i).

(d) *Determination.* (1) You do not lose eligibility under § 668.206 and we do not place you on provisional certification, if we determine that you meet the requirements for a participation rate index appeal.

(2) If we determine that your participation rate index for a fiscal year is equal to or less than 0.06015 or 0.0625, under paragraph (d)(1) of this section, we also excuse you from any subsequent loss of eligibility under § 668.206(a)(2) or placement on provisional certification under § 668.16(m)(2)(i) that would be based on the official cohort default rate for that fiscal year.

Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.

§ 668.215 Average rates appeals.

(a) *Eligibility.* (1) You may appeal a notice of a loss of eligibility under § 668.206(a)(1), based on one cohort default rate over 40 percent, if that cohort default rate is calculated as an average rate under § 668.202(d)(2).

(2) You may appeal a notice of a loss of eligibility under § 668.206(a)(2), based on three cohort default rates of 30 percent or greater, if at least two of those cohort default rates—

(i) Are calculated as average rates under § 668.202(d)(2); and

(ii) Would be less than 30 percent if calculated for the fiscal year alone using the method described in § 668.202(d)(1).

(b) *Deadline for submitting an appeal.* (1) Before notifying you of your official cohort default rate, we make an initial determination about whether you qualify for an average rates appeal. If we determine that you qualify, we notify you of that determination at the same time that we notify you of your official cohort default rate.

(2) If you disagree with our initial determination, you must send us your average rates appeal, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(c) *Determination.* You do not lose eligibility under § 668.206 if we determine that you meet the requirements for an average rates appeal.

Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.

§ 668.216 Thirty-or-fewer borrowers appeals.

(a) *Eligibility.* You may appeal a notice of a loss of eligibility under § 668.206 if 30 or fewer borrowers, in total, are included in the 3 most recent cohorts of borrowers used to calculate your cohort default rates.

(b) *Deadline for submitting an appeal.* (1) Before notifying you of your official cohort default rate, we make an initial determination about whether you qualify for a thirty-or-fewer borrowers appeal. If we determine that you qualify, we notify you of that determination at the same time that we notify you of your official cohort default rate.

(2) If you disagree with our initial determination, you must send us your thirty-or-fewer borrowers appeal, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(c) *Determination.* You do not lose eligibility under § 668.206 if we determine that you meet the requirements for a thirty-or-fewer borrowers appeal.

Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.

§ 668.217 Default prevention plans.

(a) *First year.* (1) If your cohort default rate is equal to or greater than 30 percent you must establish a default prevention task force that prepares a plan to—

(i) Identify the factors causing your cohort default rate to exceed the threshold;

(ii) Establish measurable objectives and the steps you will take to improve your cohort default rate;

(iii) Specify the actions you will take to improve student loan repayment, including counseling students on repayment options; and

(iv) Submit your default prevention plan to us.

(2) We will review your default prevention plan and offer technical assistance intended to improve student loan repayment.

(b) *Second year.* (1) If your cohort default rate is equal to or greater than 30 percent for two consecutive fiscal years, you must revise your default prevention plan and submit it to us for review.

(2) We may require you to revise your default prevention plan or specify actions you need to take to improve student loan repayment.

Authority: 20 U.S.C. 1082, 1085, 1094, 1099c.

Appendix A to Subpart N of Part 668—Sample Default Prevention Plan

This appendix is provided as a sample plan for those institutions developing a default prevention plan in accordance with § 668.217(a). It describes some measures you may find helpful in reducing the number of students that default on Federally funded loans. These are not the only measures you could implement when developing a default prevention plan.

I. Core Default Reduction Strategies

1. Establish your default prevention team by engaging your chief executive officer and relevant senior executive officials and enlisting the support of representatives from offices other than the financial aid office. Consider including individuals and organizations independent of your institution that have experience in preventing title IV loan defaults.

2. Consider your history, resources, dollars in default, and targets for default reduction to determine which activities will result in the most benefit to you and your students.

3. Define evaluation methods and establish a data collection system for measuring and verifying relevant default prevention statistics, including a statistical analysis of the borrowers who default on their loans.

4. Identify and allocate the personnel, administrative, and financial resources appropriate to implement the default prevention plan.

5. Establish annual targets for reductions in your rate.

6. Establish a process to ensure the accuracy of your rate.

II. Additional Default Reduction Strategies

1. Enhance the borrower's understanding of his or her loan repayment responsibilities through counseling and debt management activities.

2. Enhance the enrollment retention and academic persistence of borrowers through counseling and academic assistance.

3. Maintain contact with the borrower after he or she leaves your institution by using activities such as skip tracing to locate the borrower.

4. Track the borrower's delinquency status by obtaining reports from data managers and FFEL Program lenders.

5. Enhance student loan repayments through counseling the borrower on loan repayment options and facilitating contact between the borrower and the data manager or FFEL Program lender.

6. Assist a borrower who is experiencing difficulty in finding employment through career counseling, job placement assistance, and facilitating unemployment deferments.

7. Identify and implement alternative financial aid award policies and develop alternative financial resources that will reduce the need for student borrowing in the first 2 years of academic study.

III. Statistics for Measuring Progress

1. The number of students enrolled at your institution during each fiscal year.

2. The average amount borrowed by a student each fiscal year.

3. The number of borrowers scheduled to enter repayment each fiscal year.

4. The number of enrolled borrowers who received default prevention counseling services each fiscal year.

5. The average number of contacts that you or your agent had with a borrower who was in deferment or forbearance or in repayment status during each fiscal year.

6. The number of borrowers at least 60 days delinquent each fiscal year.

7. The number of borrowers who defaulted in each fiscal year.

8. The type, frequency, and results of activities performed in accordance with the default prevention plan.

PART 674—FEDERAL PERKINS LOAN PROGRAM

■ 22. The authority citation for part 674 is revised to read as follows:

Authority: 20 U.S.C. 1070g, 1087aa–1087hh, unless otherwise noted.

§ 674.12 [Amended]

■ 23. Section 674.12 is amended by:
■ (A) In paragraph (a)(1), removing the amount ''$4,000'' and adding, it its place, the amount ''$5,500''.
■ (B) In paragraph (a)(2), removing the amount ''$6,000'' and adding, in its place, the amount ''$8,000''.
■ (C) In paragraph (b)(1), removing the amount ''$20,000'' and adding, in its place, the amount ''$27,500''.
■ (D) In paragraph (b)(2), removing the amount ''$40,000'' and adding, in its place, the amount ''$60,000''.
■ (E) In paragraph (b)(3), removing the amount ''$8,000'' and adding, in its place, the amount ''$11,000''.
■ 24. Section 674.33 is amended by:
■ (A) In paragraph (d)(2), removing the word ''written''.
■ (B) In paragraph (d)(3), adding the words ''The school confirms this

agreement by notice to the borrower, and by recording the terms in the borrower's file.'' after the word ''institution.''.

■ (C) Revising the authority citation that appears at the end of the section.

The revision reads as follows:

§ 674.33 Repayment.

* * * * *

Authority: 20 U.S.C. 1087dd.

■ 25. Section 674.39 is amended by:

■ (A) In paragraph (a)(2), removing the word ''twelve'' and adding, in its place, the word ''nine''.

■ (B) In paragraph (b)(2), removing the number ''12'' and adding, in its place, the word ''nine''.

■ (C) Revising the authority citation that appears at the end of the section.

The revision reads as follows:

§ 674.39 Loan rehabilitation.

* * * * *

Authority: 20 U.S.C. 1087dd.

■ 26. Section 674.42 is amended by revising paragraph (b) to read as follows:

§ 674.42 Contact with the borrower.

* * * * *

(b) *Exit counseling.* (1) An institution must ensure that exit counseling is conducted with each borrower either in person, by audiovisual presentation, or by interactive electronic means. The institution must ensure that exit counseling is conducted shortly before the borrower ceases at least half-time study at the institution. As an alternative, in the case of a student enrolled in a correspondence program or a study-abroad program that the institution approves for credit, the borrower may be provided with written counseling material by mail within 30 days after the borrower completes the program. If a borrower withdraws from the institution without the institution's prior knowledge or fails to complete an exit counseling session as required, the institution must ensure that exit counseling is provided through either interactive electronic means or by mailing counseling materials to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from the institution or failed to complete exit counseling as required.

(2) The exit counseling must—

(i) Inform the student as to the average anticipated monthly repayment amount based on the student's indebtedness or on the average indebtedness of students who have obtained Perkins loans for attendance at the institution or in the borrower's program of study;

(ii) Explain to the borrower the options to prepay each loan and pay each loan on a shorter schedule;

(iii) Review for the borrower the option to consolidate a Federal Perkins Loan, including the consequences of consolidating a Perkins Loan. Information on the consequences of loan consolidation must include, at a minimum—

(A) The effects of consolidation on total interest to be paid, fees to be paid, and length of repayment;

(B) The effects of consolidation on a borrower's underlying loan benefits, including grace periods, loan forgiveness, cancellation, and deferment opportunities;

(C) The options of the borrower to prepay the loan or to change repayment plans; and

(D) That borrower benefit programs may vary among different lenders;

(iv) Include debt-management strategies that are designed to facilitate repayment;

(v) Explain the use of a Master Promissory Note;

(vi) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming;

(vii) Describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation;

(viii) Emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower has not completed the program, has not completed the program within the regular time for program completion, is unable to obtain employment upon completion, or is otherwise dissatisfied with or did not receive educational or other services that the borrower purchased from the institution;

(ix) Provide—

(A) A general description of the terms and conditions under which a borrower may obtain full or partial forgiveness or cancellation of principal and interest, defer repayment of principal or interest, or be granted an extension of the repayment period or a forbearance on a title IV loan; and

(B) A copy, either in print or by electronic means, of the information the Secretary makes available pursuant to section 485(d) of the HEA;

(x) Require the borrower to provide current information concerning name, address, social security number, references, and driver's license number, the borrower's expected permanent address, the address of the borrower's next of kin, as well as the name and address of the borrower's expected employer;

(xi) Review for the borrower information on the availability of the Student Loan Ombudsman's office;

(xii) Inform the borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS) and how NSLDS can be used to obtain title IV loan status information; and

(xiii) A general description of the types of tax benefits that may be available to borrowers.

(3) If exit counseling is conducted through interactive electronic means, the institution must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the exit counseling.

(4) The institution must maintain documentation substantiating the institution's compliance with this section for each borrower.

* * * * *

■ 27. Section 674.51 is amended by:

■ A. Revising paragraph (d).

■ B. Redesignating paragraphs (e) through (s) as follows:

Old paragraph	New paragraph
674.51(e)	674.51(f).
674.51(f)	674.51(h).
674.51(g)	674.51(l).
674.51(h)	674.51(m).
674.51(i)	674.51(n).
674.51(j)	674.51(p).
674.51(k)	674.51(q).
674.51(l)	674.51(r).
674.51(m)	674.51(s).
674.51(n)	674.51(t).
674.51(o)	674.51(u).
674.51(p)	674.51(w).
674.51(q)	674.51(y).
674.51(r)	674.51(z).
674.51(s)	674.51(aa).

■ C. Adding new paragraphs (e), (g), (i), (j), (k), (o), (v), (x), and (bb).

■ D. In newly redesignated paragraph (f), removing the number ''672(2)'', and adding, in its place, the number ''632(4)''.

■ E. Revising newly redesignated paragraph (n).

■ F. In newly redesignated paragraph (t), by removing the number ''672(2)'', and adding, in its place, the number ''632''.

■ G. Revising newly designated paragraph (aa).

■ H. Revising the authority citation that appears at the end of the section.

The revisions and additions read as follows:

§ 674.51 Special Definitions.

* * * * *

(d) *Child with a disability:* A child or youth from ages 3 through 21, inclusive, who requires special education and related services because he or she has one or more disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act.

(e) *Community defender organizations:* A defender organization established in accordance with section 3006A(g)(2)(B) of title 18, United States Code.

* * * * *

(g) *Educational service agency:* A regional public multi-service agency authorized by State law to develop, manage, and provide services or programs to local educational agencies as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

* * * * *

(i) *Faculty member at a Tribal College or University:* An educator or tenured individual who is employed by a Tribal College or University, as that term is defined in section 316 of the HEA, to teach, research, or perform administrative functions. For purposes of this definition an educator may be an instructor, lecturer, lab faculty, assistant professor, associate professor, full professor, dean, or academic department head.

(j) *Federal public defender organization:* A defender organization established in accordance with section 3006A(g)(2)(A) of title 18, United States Code.

(k) *Firefighter:* A firefighter is an individual who is employed by a Federal, State, or local firefighting agency to extinguish destructive fires; or provide firefighting related services such as—

(1) Providing community disaster support and, as a first responder, providing emergency medical services;

(2) Conducting search and rescue; or

(3) Providing hazardous materials mitigation (HAZMAT).

* * * * *

(n) *Infant or toddler with a disability:* An infant or toddler from birth to age 2, inclusive, who needs early intervention services for specified reasons, as defined in section 632(5)(A) of the Individuals with Disabilities Education Act.

(o) *Librarian with a master's degree:* A librarian with a master's degree is an information professional trained in library or information science who has obtained a postgraduate academic degree in library science awarded after the completion of an academic program of up to six years in duration, excluding a doctorate or professional degree.

* * * * *

(v) *Speech language pathologist with a master's degree:* An individual who evaluates or treats disorders that affect a person's speech, language, cognition, voice, swallowing and the rehabilitative or corrective treatment of physical or cognitive deficits/disorders resulting in difficulty with communication, swallowing, or both and has obtained a postgraduate academic degree awarded after the completion of an academic program of up to six years in duration, excluding a doctorate or professional degree.

* * * * *

(x) *Substantial gainful activity:* A level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both.

* * * * *

(aa) *Total and permanent disability:* The condition of an individual who—

(1) Is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that—

(i) Can be expected to result in death;

(ii) Has lasted for a continuous period of not less than 60 months; or

(iii) Can be expected to last for a continuous period of not less than 60 months; or

(2) Has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability.

(bb) *Tribal College or University:* An institution that—

(1) Qualifies for funding under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) or the Navajo Community College Assistance Act of 1978 (25 U.S.C. 640a note); or

(2) Is cited in section 532 of the Equity in Education Land Grant Status Act of 1994 (7 U.S.C. 301 note).

Authority: 20 U.S.C. 1087ee(a).

■ 28. Section 674.53 is amended by:

■ A. Adding new paragraph (a)(1)(iii).

■ B. Revising paragraphs (a)(2)(i) and (a)(2)(ii).

■ C. Revising paragraph (a)(3).

■ D. Revising paragraphs (a)(4)(i) and (a)(4)(ii).

■ E. Removing paragraph (a)(4)(iii).

■ F. Revising paragraph (a)(6).

■ G. Adding new paragraph (b)(3).

■ H. In paragraph (d)(1), removing the word ''shall'' and adding, in its place, the word ''must''.

■ I. Revising paragraph (e).

The revisions and additions read as follows:

§ 674.53 Teacher cancellation—Federal Perkins, NDSL and Defense loans.

(a) * * *

(1) * * *

(iii) An institution must cancel up to 100 percent of the outstanding balance of a Federal Perkins, NDSL, or Defense loan for teaching service that includes August 14, 2008, or begins on or after that date, at an educational service agency.

(2) * * *

(i) Is in a school district that qualified for funds, in that year, under part A of title I of the Elementary and Secondary Education Act of 1965, as amended; and

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's or educational service agency's total enrollment is made up of title I children.

(3) For each academic year, the Secretary notifies participating institutions of the schools and educational service agencies selected under paragraph (a) of this section.

(4)(i) The Secretary selects schools and educational service agencies under paragraph (a)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency must base its ranking of the schools and educational service agencies on objective standards and methods. These standards must take into account the numbers and percentages of title I children attending those schools and educational service agencies.

* * * * *

(6) A teacher, who performs service in a school or educational service agency that meets the requirement of paragraph (a)(1) of this section in any year and in a subsequent year fails to meet these requirements, may continue to teach in that school or educational service agency and will be eligible for loan cancellation pursuant to paragraph (a) of this section in subsequent years.

* * * * *

(b) * * *

(3) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins, NDSL, or Defense loan for a borrower's service that includes August 14, 2008, or begins on or after that date, as a full-time special education teacher of infants, toddlers, children, or youth with disabilities, in an educational service agency.

* * * * *

(e) *Teaching in a school system.* The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system or an educational service agency only if the borrower is directly employed by the school system.

* * * * *

■ 29. Section 674.56 is amended by:

■ A. Revising paragraph (c)(1).
■ B. Redesignating paragraph (d) as paragraph (h).
■ C. Adding paragraphs (d), (e), (f), and (g), respectively.
■ C. Revising newly redesignated paragraph (h).

The revisions and additions read as follows:

§ 674.56 Employment cancellation—Federal Perkins, NDSL, and Defense loans

* * * * *

(c) * * *

(1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or NDSL made on or after July 23, 1992, for the borrower's service as a full-time qualified professional provider of early intervention services in a public or other nonprofit program under public supervision by the lead agency as authorized in section 632 of the Individuals with Disabilities Education Act.

* * * * *

(d) *Cancellation for full-time employment as a firefighter to a local, State, or Federal fire department or fire district.* An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins, NDSL, or Defense loan for service that includes August 14, 2008, or begins on or after that date, as a full-time firefighter.

(e) *Cancellation for full-time employment as a faculty member at a Tribal College or University.* An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins, NDSL, or Defense loan for service that includes August 14, 2008, or begins on or after that date, as a full-time faculty member at a Tribal College or University.

(f) *Cancellation for full-time employment as a librarian with a master's degree.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins Loan, NDSL, or Defense loan for service that includes August 14, 2008, or begins on or after that date, as a full-time librarian, provided that the individual—

(i) Is a librarian with a master's degree; and

(ii) Is employed in an elementary school or secondary school that is eligible for assistance under part A of title I of the Elementary and Secondary Education Act of 1965, as amended; or

(iii) Is employed by a public library that serves a geographic area that contains one or more schools eligible for assistance under part A of title I of the Elementary and Secondary Education Act of 1965, as amended.

(2) For the purposes of paragraph (f) of this section, the term *geographic area* is defined as the area served by the local school district.

(g) *Cancellation for full-time employment as a speech pathologist with a master's degree.* An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins Loan, NDSL, or Defense loan for full-time employment that includes August 14, 2008, or begins on or after that date, as a speech pathologist with a master's degree who is working exclusively with schools eligible for funds under part A of title I of the Elementary and Secondary Education Act of 1965, as amended.

(h) *Cancellation rates.* (1) To qualify for cancellation under paragraphs (a), (b), (c), (d), (e), (f), and (g) of this section, a borrower must work full-time for 12 consecutive months.

* * * * *

■ 30. Section 674.57 is revised to read as follows:

§ 674.57 Cancellation for law enforcement or corrections officer service—Federal Perkins, NDSL, and Defense loans.

(a)(1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or NDSL made on or after November 29, 1990, for full-time service as a law enforcement or corrections officer for an eligible employing agency.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, NDSL, or Defense loan made prior to November 29, 1990, for law enforcement or correction officer service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(3) An eligible employing agency is an agency—

(i) That is a local, State, or Federal law enforcement or corrections agency;

(ii) That is publicly-funded; and

(iii) The principal activities of which pertain to crime prevention, control, or reduction or the enforcement of the criminal law.

(4) Agencies that are primarily responsible for enforcement of civil, regulatory, or administrative laws are ineligible employing agencies.

(5) A borrower qualifies for cancellation under this section only if the borrower is—

(i) A sworn law enforcement or corrections officer; or

(ii) A person whose principal responsibilities are unique to the criminal justice system.

(6) To qualify for a cancellation under this section, the borrower's service must be essential in the performance of the eligible employing agency's primary mission.

(7) The agency must be able to document the employee's functions.

(8) A borrower whose principal official responsibilities are administrative or supportive does not qualify for cancellation under this section.

(b) An institution must cancel up to 100 percent of the outstanding balance of a borrower's Federal Perkins, NDSL, or Defense loan for service that includes August 14, 2008, or begins on or after that date, as a full-time attorney employed in Federal public defender organizations or community defender organizations, established in accordance with section 3006A(g)(2) of title 18, U.S.C.

(c)(1) To qualify for cancellation under paragraph (a) of this section, a borrower must work full-time for 12 consecutive months.

(2) Cancellation rates are—

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time employment;

(ii) 20 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time employment; and

(iii) 30 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time employment.

Authority: 20 U.S.C. 1087ee.

■ 31. Section 674.58 is amended by:
■ A. Revising the section heading.
■ B. Redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5), respectively.
■ C. Adding new paragraph (a)(3).
■ D. Revising newly redesignated paragraph (a)(4).
■ E. Revising newly redesignated paragraph (a)(5).
■ F. Redesignating paragraph (c)(2) as paragraph (c)(4).
■ G. Adding new paragraphs (c)(2) and (c)(3).
■ H. Revising newly redesignated paragraph (c)(4).

The revisions and additions read as follows:

§ 674.58 Cancellation for service in an early childhood education program.

(a) * * *

(3) An institution must cancel up to 100 percent of the outstanding balance of a borrower's NDSL, Defense, or Federal Perkins loan for service that includes August 14, 2008, or begins on or after that date, as a full-time staff member of a pre-kindergarten or childcare program that is licensed or regulated by the State.

(4) The Head Start, pre-kindergarten or child care program in which the borrower serves must operate for a complete academic year, or its equivalent.

(5) In order to qualify for cancellation, the borrower's salary may not exceed the salary of a comparable employee working in the local educational agency of the area served by the local Head Start, pre-kindergarten or child care program.

* * * * *

(c) * * *

(2) A pre-kindergarten program is a State-funded program that serves children from birth through age six and addresses the children's cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development.

(3) A child care program is a program that is licensed or regulated by the State and provides child care services for fewer than 24 hours per day per child, unless care in excess of 24 consecutive hours is needed due to the nature of the parents' work.

(4) ''Full-time staff member'' is a person regularly employed in a full-time professional capacity to carry out the educational part of a Head Start, pre-kindergarten or child care program.

* * * * *

■ 32. Section 674.59 is amended by:

■ A. In paragraph (a)(1), removing the word ''shall'' and adding, in its place, the word ''must''.

■ B. Revising paragraph (b)(1).

■ C. Adding new paragraph (c).

■ D. Redesignating paragraph (b)(3) as paragraph (d).

■ E. Revising the authority citation that appears at the end of the section.

The addition and revisions read as follows:

§ 674.59 Cancellation for military service.

* * * * *

(b) * * *

(1) An institution must cancel up to 50 percent of the outstanding balance on an NDSL or Perkins loan for active duty service that ended before August 14, 2008, as a member of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard in an area of hostilities that qualifies for special pay under section 310 of title 37 of the United States Code.

* * * * *

(c)(1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or NDSL loan for a borrower's full year of active duty service that includes August 14, 2008, or begins on or after that date, as a member of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard in an area of hostilities that qualifies for special pay under section 310 of title 37 of the United States Code.

(2) The cancellation rate is 15 percent for the first and second year of qualifying service, 20 percent for the third and fourth year of qualifying service, and 30 percent for the fifth year of qualifying service.

Authority: 20 U.S.C. 1087ee.

§ 674.61 [Amended]

■ 33. Section 674.61 is amended by removing the citation ''§ 674.51(s)'' each time it appears and adding, in its place, the citation ''§ 674.51(aa)''.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 34. The authority citation for part 682 is revised to read as follows:

Authority: 20 U.S.C. 1070g, 1071 to 1087–2, unless otherwise noted.

■ 35. In § 682.212, revise paragraph (h) to read as follows:

§ 682.212 Prohibited transactions.

* * * * *

(h) A school may, at its option, make available a list of recommended or suggested lenders, in print or any other medium or form, for use by the school's students or their parents provided that such list complies with the requirements in 34 CFR 601.10 and 668.14(a)(28).

* * * * *

■ 36. Section 682.604 is amended by revising paragraphs (c)(5), (c)(8), (f), and (g) to read as follows:

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * * * *

(c) * * *

(5) A school may not release the first installment of a Stafford loan for endorsement to a student who is enrolled in the first year of an undergraduate program of study and who has not previously received a Stafford, SLS, Direct Subsidized, or Direct Unsubsidized loan until 30 days after the first day of the student's program of study unless—

(i) Except as provided in paragraph (c)(5)(ii) of this section, the school in which the student is enrolled has a cohort default rate, calculated under subpart M of 34 CFR part 668, of less than 10 percent for each of the three most recent fiscal years for which data are available; or

(ii) For loans first disbursed on or after October 1, 2011, the school in which the student is enrolled has a cohort default rate, calculated under either subpart M or subpart N of 34 CFR part 668 of less than 15 percent for each of the three most recent fiscal years for which data are available; or

(iii) The school is an eligible home institution certifying a loan to cover the student's cost of attendance in a study abroad program and has a cohort default rate, calculated under either subpart M or subpart N of 34 CFR part 668, of less than 5 percent for the single most recent fiscal year for which data are available.

* * * * *

(8) Notwithstanding the requirements of paragraphs (c)(6) through (c)(9) of this section, a school is not required to deliver loan proceeds in more than one installment if—

(i)(A) The student's loan period is not more than one semester, one trimester, one quarter, or, for non term-based schools or schools with non-standard terms, 4 months; and

(B)(*1*) Except as provided in paragraph (c)(8)(i)(B)(*2*) of this section, the school in which the student is enrolled has a cohort default rate, calculated under subpart M of 34 CFR part 668, of less than 10 percent for each of the three most recent fiscal years for which data are available; or

(*2*) For loan disbursements made on or after October 1, 2011, the school in which the student is enrolled has a cohort default rate, calculated under either subpart M or subpart N of 34 CFR part 668 of less than 15 percent for each of the three most recent fiscal years for which data are available; or

(ii) The school is an eligible home institution certifying a loan to cover the student's cost of attendance in a study abroad program and has a cohort default rate, calculated under subpart M or subpart N of 34 CFR part 668, of less than 5 percent for the single most recent fiscal year for which data are available.

* * * * *

(f) *Entrance counseling.* (1) A school must ensure that entrance counseling is conducted with each Stafford loan borrower prior to its release of the first disbursement, unless the student borrower has received a prior Federal Stafford, Federal SLS, or Direct subsidized or unsubsidized loan.

(2) A school must ensure that entrance counseling is conducted with each graduate or professional student PLUS loan borrower prior to its release of the first disbursement, unless the student has received a prior Federal PLUS loan or Direct PLUS loan.

(3) Entrance counseling for Stafford and graduate or professional student PLUS Loan borrowers must provide comprehensive information on the terms and conditions of the loan and on the responsibilities of the borrower with respect to the loan. This information may be provided to the borrower—

(i) During an entrance counseling session conducted in person;

(ii) On a separate written form provided to the borrower that the borrower signs and returns to the school; or

(iii) Online or by interactive electronic means, with the borrower acknowledging receipt of the information.

(4) If entrance counseling is conducted online or through interactive electronic means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the entrance counseling, which may include completion of any interactive program that tests the borrower's understanding of the terms and conditions of the borrower's loans.

(5) A school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions regarding those programs. As an alternative, prior to releasing the proceeds of a loan, in the case of a student borrower enrolled in a correspondence program or a student borrower enrolled in a study-abroad program that the home institution approves for credit, the counseling may be provided through written materials.

(6) Entrance counseling for Stafford Loan borrowers must—

(i) Explain the use of a Master Promissory Note;

(ii) Emphasize to the student borrower the seriousness and importance of the repayment obligation the student borrower is assuming;

(iii) Describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation;

(iv) In the case of a student borrower (other than a loan made or originated by the school), emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, does not complete the program within the regular time for program completion, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school;

(v) Inform the student borrower of sample monthly repayment amounts based on—

(A) A range of student levels of indebtedness of Stafford loan borrowers, or student borrowers with Stafford and PLUS loans, depending on the types of loans the borrower has obtained; or

(B) The average indebtedness of other borrowers in the same program at the same school as the borrower;

(vi) To the extent practicable, explain the effect of accepting the loan to be disbursed on the eligibility of the borrower for other forms of student financial assistance;

(vii) Provide information on how interest accrues and is capitalized during periods when the interest is not paid by either the borrower or the Secretary;

(viii) Inform the borrower of the option to pay the interest on an unsubsidized Stafford Loan while the borrower is in school;

(ix) Explain the definition of half-time enrollment at the school, during regular terms and summer school, if applicable, and the consequences of not maintaining half-time enrollment;

(x) Explain the importance of contacting the appropriate offices at the school if the borrower withdraws prior to completing the borrower's program of study so that the school can provide exit counseling, including information regarding the borrower's repayment options and loan consolidation;

(xi) Provide information on the National Student Loan Data System and how the borrower can access the borrower's records; and

(xii) Provide the name of and contact information for the individual the borrower may contact if the borrower has any questions about the borrower's rights and responsibilities or the terms and conditions of the loan.

(7) Entrance counseling for graduate or professional student PLUS Loan borrowers must—

(i) Inform the student borrower of sample monthly repayment amounts based on—

(A) A range of student levels of indebtedness of graduate or professional student PLUS loan borrowers, or student borrowers with Stafford and PLUS loans, depending on the types of loans the borrower has obtained; or

(B) The average indebtedness of other borrowers in the same program at the same school as the borrower;

(ii) Inform the borrower of the option to pay interest on a PLUS Loan while the borrower is in school;

(iii) For a graduate or professional student PLUS Loan borrower who has received a prior FFEL Stafford, or Direct subsidized or unsubsidized loan, provide the information specified in § 682.603(d)(1)(i) through § 682.603(d)(1)(iii); and

(iv) For a graduate or professional student PLUS Loan borrower who has not received a prior FFEL Stafford, or Direct subsidized or unsubsidized loan, provide the information specified in paragraph (f)(6)(i) through (f)(6)(xii) of this section.

(8) A school must maintain documentation substantiating the school's compliance with this section for each student borrower.

(g) *Exit counseling.* (1) A school must ensure that exit counseling is conducted with each Stafford loan borrower and graduate or professional student PLUS Loan borrower either in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that this counseling is conducted shortly before the student borrower ceases at least half-time study at the school, and that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program that the home institution approves for credit, written counseling materials may be provided by mail within 30 days after the student borrower completes the program. If a student borrower withdraws from school without the school's prior knowledge or fails to complete an exit counseling session as required, the school must ensure that exit counseling is provided through either interactive electronic means or by mailing written counseling materials to the student borrower at the student borrower's last known address within 30 days after learning that the student borrower has withdrawn from school or failed to complete the exit counseling as required.

(2) The exit counseling must—

(i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of student borrowers who have obtained Stafford loans, PLUS Loans, or student borrowers who have obtained both Stafford and PLUS loans,

depending on the types of loans the student borrower has obtained, for attendance at the same school or in the same program of study at the same school;

(ii) Review for the student borrower available repayment plan options, including standard, graduated, extended, income sensitive and income-based repayment plans, including a description of the different features of each plan and sample information showing the average anticipated monthly payments, and the difference in interest paid and total payments under each plan;

(iii) Explain to the borrower the options to prepay each loan, to pay each loan on a shorter schedule, and to change repayment plans;

(iv) Provide information on the effects of loan consolidation including, at a minimum—

(A) The effects of consolidation on total interest to be paid, fees to be paid, and length of repayment;

(B) The effects of consolidation on a borrower's underlying loan benefits, including grace periods, loan forgiveness, cancellation, and deferment opportunities;

(C) The options of the borrower to prepay the loan and to change repayment plans; and

(D) That borrower benefit programs may vary among different lenders;

(v) Include debt-management strategies that are designed to facilitate repayment;

(vi) Include the matters described in paragraph (f)(6)(i), (f)(6)(ii), and (f)(6)(iv) of this section;

(vii) Describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation;

(viii) Provide—

(A) A general description of the terms and conditions under which a borrower may obtain full or partial forgiveness or discharge of principal and interest, defer repayment of principal or interest, or be granted forbearance on a title IV loan, including forgiveness benefits or discharge benefits available to a FFEL borrower who consolidates his or her loan into the Direct Loan program; and

(B) A copy, either in print or by electronic means, of the information the Secretary makes available pursuant to section 485(d) of the HEA;

(ix) Require the student borrower to provide current information concerning name, address, social security number, references, and driver's license number and State of issuance, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer (if known). The school must ensure that this information is provided to the guaranty agency or agencies listed in the student borrower's records within 60 days after the student borrower provides the information;

(x) Review for the student borrower information on the availability of the Student Loan Ombudsman's office;

(xi) Inform the student borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS) and how NSLDS can be used to obtain title IV loan status information; and

(xii) A general description of the types of tax benefits that may be available to borrowers.

(3) If exit counseling is conducted by electronic interactive means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the counseling.

(4) The school must maintain documentation substantiating the school's compliance with this section for each student borrower.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 37. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087a, *et seq.*, unless otherwise noted.

■ 38. Section 685.301(b)(6) is amended by:

■ A. Revising paragraph (b)(6)(i).

■ B. In paragraph (b)(6)(ii), removing the reference to ''Paragraphs (b)(8)(i)(A) and (B) of this section'' and adding, in its place, a reference to ''Paragraphs (b)(6)(i)(A) and (B) of this section''.

■ C. In paragraph (b)(6)(ii), adding the words ''or subpart N'' after the words ''under subpart M''.

■ D. In paragraph (b)(6)(iii), removing the reference to ''Paragraph (b)(8)(i)(B) of this section'' and adding, in its place, a reference to ''Paragraph (b)(6)(i)(B) of this section''.

■ E. In paragraph (b)(6)(iii), adding the words ''or subpart N'' after the words ''under subpart M''.

The revision reads as follows:

§ 685.301 Origination of a loan by a Direct Loan Program school.

* * * * *

(b) * * *

(6)(i) A school is not required to make more than one disbursement if—

(A)(*1*) The loan period is not more than one semester, one trimester, one quarter, or, for non term-based schools or schools with non-standard terms, 4 months; and

(*2*)(*i*) Except as provided in paragraph (b)(6)(i)(A)(*2*)(*ii*) of this section, the school has a cohort default rate, calculated under subpart M of 34 CFR part 668 of less than 10 percent for each of the three most recent fiscal years for which data are available;

(*ii*) For loan disbursements made on or after October 1, 2011, the school in which the student is enrolled has a cohort default rate, calculated under either subpart M or subpart N of 34 CFR part 668 of less than 15 percent for each of the three most recent fiscal years, for which data are available.

(B) The school is an eligible home institution originating a loan to cover the cost of attendance in a study abroad program and has a cohort default rate, calculated under subpart M or subpart N of 34 part 668, of less than 5 percent for the single most recent fiscal year for which data are available; or

(C) The school is not in a State.

* * * * *

■ 39. Section 685.303(b)(4) is amended by:

■ A. Revising paragraph (b)(4)(i)(A).

■ B. In paragraph (b)(4)(ii), adding the words ''or subpart N'' after the words ''under subpart M''.

■ C. In paragraph (b)(4)(iii), removing the words ''Subpart M'' and adding in their place the words ''subpart M or subpart N''.

The revision reads as follows:

§ 685.303 Processing loan proceeds.

* * * * *

(b) * * *

(4) * * *

(i) * * *

(A)(*1*) Except as provided in paragraph (b)(4)(i)(A)(*2*) of this section, the school has a cohort default rate, calculated under subpart M of 34 CFR part 668, or weighted average cohort rate of less than 10 percent for each of the three most recent fiscal years for which data are available; or

(*2*) For loans first disbursed on or after October 1, 2011, the school in which the student is enrolled has a cohort default rate, calculated under either subpart M or N of 34 CFR part 668 of less than 15 percent for each of the three most recent fiscal years for which data are available;

* * * * *

■ 40. Section 685.304 is revised to read as follows:

§ 685.304 Counseling borrowers.

(a) *Entrance counseling.* (1) Except as provided in paragraph (a)(8)of this section, a school must ensure that entrance counseling is conducted with

each Direct Subsidized Loan or Direct Unsubsidized Loan student borrower prior to making the first disbursement of the proceeds of a loan to a student borrower unless the student borrower has received a prior Direct Subsidized, Direct Unsubsidized, Federal Stafford, or Federal SLS Loan.

(2) Except as provided in paragraph (a)(8) of this section, a school must ensure that entrance counseling is conducted with each graduate or professional student Direct PLUS Loan borrower prior to making the first disbursement of the loan unless the student borrower has received a prior Direct PLUS Loan or Federal PLUS Loan.

(3) Entrance counseling for Direct Subsidized Loan, Direct Unsubsidized Loan, and graduate or professional student Direct PLUS Loan borrowers must provide the borrower with comprehensive information on the terms and conditions of the loan and on the responsibilities of the borrower with respect to the loan. This information may be provided to the borrower—

(i) During an entrance counseling session, conducted in person;

(ii) On a separate written form provided to the borrower that the borrower signs and returns to the school; or

(iii) Online or by interactive electronic means, with the borrower acknowledging receipt of the information.

(4) If entrance counseling is conducted online or through interactive electronic means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the entrance counseling, which may include completion of any interactive program that tests the borrower's understanding of the terms and conditions of the borrower's loans.

(5) A school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program approved for credit at the home institution, the student borrower may be provided with written counseling materials before the loan proceeds are disbursed.

(6) Entrance counseling for Direct Subsidized Loan and Direct Unsubsidized Loan borrowers must—

(i) Explain the use of a Master Promissory Note (MPN);

(ii) Emphasize to the borrower the seriousness and importance of the repayment obligation the student borrower is assuming;

(iii) Describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation;

(iv) Emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, does not complete the program within the regular time for program completion, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school;

(v) Inform the student borrower of sample monthly repayment amounts based on—

(A) A range of student levels of indebtedness of Direct Subsidized Loan and Direct Unsubsidized Loan borrowers, or student borrowers with Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans depending on the types of loans the borrower has obtained; or

(B) The average indebtedness of other borrowers in the same program at the same school as the borrower;

(vi) To the extent practicable, explain the effect of accepting the loan to be disbursed on the eligibility of the borrower for other forms of student financial assistance;

(vii) Provide information on how interest accrues and is capitalized during periods when the interest is not paid by either the borrower or the Secretary;

(viii) Inform the borrower of the option to pay the interest on a Direct Unsubsidized Loan while the borrower is in school;

(ix) Explain the definition of half-time enrollment at the school, during regular terms and summer school, if applicable, and the consequences of not maintaining half-time enrollment;

(x) Explain the importance of contacting the appropriate offices at the school if the borrower withdraws prior to completing the borrower's program of study so that the school can provide exit counseling, including information regarding the borrower's repayment options and loan consolidation;

(xi) Provide information on the National Student Loan Data System and how the borrower can access the borrower's records; and

(xii) Provide the name of and contact information for the individual the borrower may contact if the borrower has any questions about the borrower's rights and responsibilities or the terms and conditions of the loan.

(7) Entrance counseling for graduate or professional student Direct PLUS Loan borrowers must—

(i) Inform the student borrower of sample monthly repayment amounts based on—

(A) A range of student levels or indebtedness of graduate or professional student PLUS loan borrowers, or student borrowers with Direct PLUS Loans and Direct Subsidized Loans or Direct Unsubsidized Loans, depending on the types of loans the borrower has obtained; or

(B) The average indebtedness of other borrowers in the same program at the same school;

(ii) Inform the borrower of the option to pay interest on a PLUS Loan while the borrower is in school;

(iii) For a graduate or professional student PLUS Loan borrower who has received a prior FFEL Stafford, or Direct Subsidized or Unsubsidized Loan, provide the information specified in § 685.301(a)(3)(i)(A) through § 685.301(a)(3)(i)(C); and

(iv) For a graduate or professional student PLUS Loan borrower who has not received a prior FFEL Stafford, or Direct Subsidized or Direct Unsubsidized Loan, provide the information specified in paragraph (a)(6)(i) through paragraph (a)(6)(xii) of this section.

(8) A school may adopt an alternative approach for entrance counseling as part of the school's quality assurance plan described in § 685.300(b)(9). If a school adopts an alternative approach, it is not required to meet the requirements of paragraphs (a)(1) through (a)(7) of this section unless the Secretary determines that the alternative approach is not adequate for the school. The alternative approach must—

(i) Ensure that each student borrower subject to entrance counseling under paragraph (a)(1) or (a)(2) of this section is provided written counseling materials that contain the information described in paragraphs (a)(6)(i) through (a)(6)(v) of this section;

(ii) Be designed to target those student borrowers who are most likely to default on their repayment obligations and provide them more intensive counseling and support services; and

(iii) Include performance measures that demonstrate the effectiveness of the school's alternative approach. These performance measures must include objective outcomes, such as levels of borrowing, default rates, and withdrawal rates.

(9) The school must maintain documentation substantiating the

school's compliance with this section for each student borrower.

(b) *Exit counseling.* (1) A school must ensure that exit counseling is conducted with each Direct Subsidized Loan or Direct Unsubsidized Loan borrower and graduate or professional student Direct PLUS Loan borrower shortly before the student borrower ceases at least half-time study at the school.

(2) The exit counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program approved for credit at the home institution, the student borrower may be provided with written counseling materials within 30 days after the student borrower completes the program.

(3) If a student borrower withdraws from school without the school's prior knowledge or fails to complete the exit counseling as required, exit counseling must be provided either through interactive electronic means or by mailing written counseling materials to the student borrower at the student borrower's last known address within 30 days after the school learns that the student borrower has withdrawn from school or failed to complete the exit counseling as required.

(4) The exit counseling must—

(i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of student borrowers who have obtained Direct Subsidized Loans and Direct Unsubsidized Loans, student borrowers who have obtained only Direct PLUS Loans, or student borrowers who have obtained Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans, depending on the types of loans the student borrower has obtained, for attendance at the same school or in the same program of study at the same school;

(ii) Review for the student borrower available repayment plan options including the standard repayment, extended repayment, graduated repayment, income contingent repayment plans, and income-based repayment plans, including a description of the different features of each plan and sample information showing the average anticipated monthly payments, and the difference in interest paid and total payments under each plan;

(iii) Explain to the borrower the options to prepay each loan, to pay each loan on a shorter schedule, and to change repayment plans;

(iv) Provide information on the effects of loan consolidation including, at a minimum—

(A) The effects of consolidation on total interest to be paid, fees to be paid, and length of repayment;

(B) The effects of consolidation on a borrower's underlying loan benefits, including grace periods, loan forgiveness, cancellation, and deferment opportunities;

(C) The options of the borrower to prepay the loan and to change repayment plans; and

(D) That borrower benefit programs may vary among different lenders;

(v) Include debt-management strategies that are designed to facilitate repayment;

(vi) Explain to the student borrower how to contact the party servicing the student borrower's Direct Loans;

(vii) Meet the requirements described in paragraphs (a)(6)(i), (a)(6)(ii), and (a)(6)(iv) of this section;

(viii) Describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation;

(ix) Provide—

(A) A general description of the terms and conditions under which a borrower may obtain full or partial forgiveness or discharge of principal and interest, defer repayment of principal or interest, or be granted forbearance on a title IV loan; and

(B) A copy, either in print or by electronic means, of the information the Secretary makes available pursuant to section 485(d) of the HEA;

(x) Review for the student borrower information on the availability of the Department's Student Loan Ombudsman's office;

(xi) Inform the student borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS) and how NSLDS can be used to obtain title IV loan status information;

(xii) A general description of the types of tax benefits that may be available to borrowers; and

(xiii) Require the student borrower to provide current information concerning name, address, social security number, references, and driver's license number and State of issuance, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer (if known).

(5) The school must ensure that the information required in paragraph (b)(4)(xiii) of this section is provided to the Secretary within 60 days after the student borrower provides the information.

(6) If exit counseling is conducted through interactive electronic means, a school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the exit counseling.

(7) The school must maintain documentation substantiating the school's compliance with this section for each student borrower.

(Approved by the Office of Management and Budget under control number 1845–0021)

Authority: 20 U.S.C. 1087a *et seq.*).

[FR Doc. E9–25073 Filed 10–27–09; 8:45 am]

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Federal Register

Wednesday,
October 28, 2009

Part III

Environmental Protection Agency

40 CFR Parts 9 and 63

National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[EPA–HQ–OAR–2003–0146; FRL–8972–4]

RIN 2060–AO55

National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action amends the national emission standards for petroleum refineries to add maximum achievable control technology standards for heat exchange systems. This action also amends the general provisions cross-reference table and corrects section references.

DATES: The final amendments are effective on October 28, 2009. The incorporation by reference of certain publications listed in the final rule amendments is approved by the Director of the Federal Register as of October 28, 2009.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0146. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Environmental Protection Agency, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Lucas, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0884; fax number (919) 541–0246; e-mail address: *lucas.bob@epa.gov*.

SUPPLEMENTARY INFORMATION: The information in this preamble is organized as follows:

I. General Information

A. Does this action apply to me?

The regulated category and entities potentially affected by this final action include:

Category	NAICS [1] code	Examples of regulated entities
Industry	324110	Petroleum refineries located at a major source that are subject to 40 CFR part 63, subpart CC.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this final rule. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in 40 CFR 63.640 of subpart CC (National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries). If you have any questions regarding the applicability of this action to a particular entity, contact either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web through the Technology Transfer Network (TTN). Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by December 28, 2009. Under section 307(d)(7)(B) of the CAA, only an objection to these final rules that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA also provides a mechanism for us to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection

arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

II. Background Information

Section 112 of the CAA establishes a regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. After EPA has identified categories of sources emitting one or more of the HAP listed in section 112(b) of the CAA, section 112(d) calls for us to promulgate national emission standards for hazardous air pollutants (NESHAP) for those sources. For ''major sources'' that emit or have the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year, these technology-based standards must reflect the maximum reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards.

For MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as floor requirements. See CAA section 112(d)(3). Specifically, for new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT, we must also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

We published the final MACT standards for petroleum refineries (40 CFR part 63, subpart CC) on August 18, 1995 (60 FR 43620). These standards are commonly referred to as the ''Refinery MACT 1'' standards because certain process vents were excluded from this source category and subsequently regulated under a second MACT standard specific to these petroleum refinery process vents (40 CFR part 63, subpart UUU, referred to as ''Refinery MACT 2'').

In developing this rule, we first issued an advanced notice of proposed rulemaking (ANPR) on March 29, 2007. The purpose of the ANPR, which covered the sources subject to the Refinery MACT 1 rule and other source categories, was to solicit additional emissions data and any corrections to the data we already had. We issued an initial proposed rule for the petroleum refineries subject to the Refinery MACT 1 on September 4, 2007, and held a public hearing in Houston, Texas, on November 27, 2007. In response to public comments on the initial proposal, we collected additional information and revised our analysis of the MACT floor. Based on the results of these additional analyses, we issued a supplemental proposal on November 10, 2008, that established a new MACT floor for heat exchange systems. A public hearing for the supplemental proposal was held in Research Triangle Park, North Carolina, on November 25, 2008. We are now taking final action to establish standards for heat exchange systems in the Refinery MACT 1 standards (40 CFR part 63, subpart CC) and to update and amend Table 6 to 40 CFR part 63, subpart CC.[1]

III. Summary of Final Amendments to NESHAP for Petroleum Refineries and Changes Since Proposal

A. What requirements for heat exchange systems are we promulgating pursuant to CAA section 112(d)(2)?

On September 4, 2007, we proposed, under CAA section 112(d)(2), two options for work practice standards for cooling towers: Option 1 was proposed based on our initial assessment of the MACT floor and Option 2 was a beyond-the-floor option. These options would require the owner or operator of a new or existing source to monitor for leaks in the cooling tower return lines from heat exchangers in organic HAP service (*i.e.,* lines that contain or contact fluids with 5 percent by weight or greater of total organic HAP listed in Table 1 of the rule) and, where leaks are detected, to repair such leaks within a specified period of time.

On November 10, 2008, we issued a supplemental proposal that significantly modified the proposed monitoring methods, leak definitions, and corrective action timeframe based on a revised MACT floor and beyond-the-floor analysis. In the supplemental proposal, we also redefined the requirements in terms of heat exchange systems to include the heat exchangers, for which corrective actions are targeted, as part of the source and to specifically address once-through cooling systems.

After considering public comments, for purposes of establishing MACT under CAA section 112(d)(2), we have selected the MACT floor requirements specified in the supplemental proposal for heat exchange systems in organic HAP service at petroleum refineries. We rejected the beyond-the-floor option because it is not cost-effective.

Under these selected requirements, owners and operators of heat exchange systems that are in organic HAP service at new and existing sources are required to conduct monthly sampling and analyses using the Texas Commission on Environmental Quality's (TCEQ) Modified El Paso Method, Revision Number One, dated January 2003.[2] For existing sources, a leak is defined as 6.2 parts per million by volume (ppmv) total strippable volatile organic compounds (VOC) in the stripping gas collected via the Modified El Paso Method. For new sources, a leak is defined as 3.1 ppmv total strippable VOC collected via the Modified El Paso Method. The amendments require the repair of leaks in heat exchangers in organic HAP service within 45 days of the sampling event in which the leak is detected, unless a delay in repair is allowed. Delay in repair of the leak is allowed until the next shutdown if the repair of the leak requires the process unit served by the leaking heat exchanger to be shut down and the total strippable VOC concentration is less than 62 ppmv. Delay in repair of the leak is also allowed for up to 120 days

[1] We were also required by a Consent Decree to consider and address the application of the NESHAP General Provisions in 40 CFR part 63, subpart A to the existing Refinery MACT 1 rule (subpart CC).

[2] ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources,'' Revision Number One, dated January 2003, Sampling Procedures Manual, Appendix P: Cooling Tower Monitoring, prepared by Texas Commission on Environmental Quality, January 31, 2003 (incorporated by reference—see § 63.14).

if the total strippable VOC concentration is less than 62 ppmv and if critical parts or personnel are not available. The owner or operator is required to continue monthly monitoring and to repair the heat exchanger within 30 days if sampling results show that the leak exceeds 62 ppmv total strippable VOC.

Sampling for leaks can be done for individual or combined heat exchangers. For heat exchange systems including a cooling tower, sampling can be conducted at the combined cooling tower inlet water location. Similarly, for once-through heat exchange systems, the sampling can be conducted after the heat exchanger water is combined and prior to discharge where it will be open to atmosphere. For both cooling tower and once-through heat exchange systems, sampling can be conducted at individual heat exchangers in the return or ''exit'' lines (*i.e.,* water lines returning the water from the heat exchangers to the cooling tower or to the discharge point). That is, if the cooling tower or once-through system services multiple heat exchangers, the owner or operator may elect to monitor only the heat exchangers ''in organic HAP service'' or monitor at branch points that combine several heat exchanger exit lines, or monitor at the combined stream for the entire system. If a leak is detected (the measured VOC concentration exceeds the applicable leak definition) at the combined cooling tower inlet or once-through system, the owner or operator may either fix the leak (reduce the VOC concentration to less than the applicable leak definition) or sample heat exchanger exit lines for combinations of heat exchanger exit lines or sample each heat exchanger ''in organic HAP service'' as necessary to document that the leak is not originating from a heat exchanger ''in organic HAP service.'' If a leak is detected in an individual heat exchanger ''in organic HAP service,'' that leak must be repaired.

All new or existing refineries with a heat exchange system ''in organic HAP service'' are required to maintain records of all heat exchangers and which of those heat exchangers are in organic HAP service, the cooling towers and once-through systems associated with heat exchangers in organic HAP service, monthly monitoring results, and information for any delays in repair of a leak.

These requirements will apply to sources on a continuous basis, including periods of startup, shutdown, and malfunction (SSM). As provided in the response to comments below, properly operating heat exchangers will not leak HAP into the cooling water, so HAP will not be emitted from the cooling tower or once-through discharges. It is only when they malfunction (*i.e.,* there are leaks) that there may be HAP emissions. The MACT standard for heat exchange units addresses these emissions. Furthermore, there are no HAP emissions associated with start-up and shutdown.

The requirements outlined above are based on the MACT floor determination. We evaluated the following beyond-the-floor options: having a leak definition of 3.1 ppmv for existing sources (beyond-the-floor option for existing sources) and requiring continuous monitoring (beyond-the-floor options for both new and existing sources). As described in our supplemental proposal, we determined that these beyond-the-floor options were not cost-effective and concluded that MACT was the floor level of control.

The final MACT requirements for heat exchange systems will reduce HAP emissions by 630 tons per year (ton/yr). The final requirements for heat exchange systems will also reduce VOC emissions by 4,100 ton/yr. Reducing VOC emissions may provide the added benefit of reducing ambient concentrations of ozone and may reduce fine particulate matter. The annualized nationwide cost impacts of these final standards for heat exchange systems are estimated to be $3.0 million. Our economic analysis indicates that this cost will have little impact on the price and output of petroleum products.

B. What other revisions and clarifications are we making?

As proposed, we are amending 40 CFR 63.650(a) of subpart CC to replace ''gasoline loading racks'' with ''Group 1 gasoline loading racks'' to clarify the applicability of the requirements. Furthermore, as we proposed on November 10, 2008, we are also finalizing proposed amendments to the cross-references to subparts R and Y of 40 CFR part 63 in the rule text and in Tables 4 and 5 of subpart CC because subparts R and Y were amended and the revised cross-references clarify the requirements of subpart CC.

We are finalizing amendments to Table 6 to 40 CFR part 63, subpart CC (General Provisions Applicability to Subpart CC) to bring the table up-to-date with requirements of the General Provisions that have been amended since this table was created, to correct cross-references, and to incorporate additional sections of the General Provisions that are necessary to implement other subparts that are cross-referenced by this rule. With respect to the exemption from emission standards during periods of SSM in the General Provisions (*see, e.g.,* 40 CFR 63.6(f) and (h)), we note that on December 19, 2008, in a decision addressing a challenge to the 2002, 2004, and 2006 amendments to those provisions, the Court of Appeals for the District of Columbia Circuit vacated the SSM exemption. *Sierra Club* v. *EPA* (D.C. Cir. No. 02–1135).

The CAA section 112(d)(2) and (3) MACT standard we are promulgating today for heat exchange systems is not implicated by that decision because it does not rely on or reference the provisions of the vacated rule and because the MACT standard applies at all times. We are amending Table 6 to clarify that the MACT standard for heat exchange systems applies at all times.

We are still evaluating the recent court decision. At this time, we are not making any additional changes to Table 6 with respect to the SSM provisions in 40 CFR 63.6(f)(1) and (h)(1). We have completed our initial assessment of the General Provisions and their application to subpart CC of part 63. The recent court decision requires further analysis, and we are currently evaluating how to address SSM events for Refinery MACT 1 sources in light of the court decision.

We are also finalizing amendments to Table 1 and Table 7 to delete methyl ethyl ketone (also known as 2-butanone) from the HAP listed in those tables because methyl ethyl ketone has been delisted as a HAP. We are finalizing amendments to clarify the applicability sections by changing general references to ''the promulgation date'' to specify the actual promulgation date of the original subpart CC of part 63. Finally, we are also finalizing amendments to clarify how owners and operators should comply with overlapping standards for equipment leaks.

C. What is the compliance schedule for the final amendments?

The final amendments to the Refinery MACT 1 rule will be effective on October 28, 2009. Under section 112(i)(1) of the CAA, any new facility must comply upon startup or on the effective date of the rule, whichever is later. For purposes of determining compliance with these amendments, a new source is a source that commenced construction or reconstruction after September 4, 2007 (the initial date of proposal for these regulations). Consistent with the requirements of CAA section 112(1)(3), the owner or operator of an existing source (including an existing source for these amendments that is currently subject to 1995 Refinery MACT 1 standards for new sources) must comply with the heat exchange system requirements no later than

October 29, 2012. The basis for the 3-year compliance period is set forth below in our responses to comment.

IV. Summary of Comments and Responses

This preamble and the document ''National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries: Background Information for Final Standards for Heat Exchange Systems—Summary of Public Comments and Responses'' (''Response to Comments'') located in the docket (Docket ID No. EPA–HQ–OAR–2003–0146) include only comment summaries and responses to issues related to heat exchange systems and other clarifying amendments. The major comments on those issues and our responses are summarized in the following sections. A summary of the remainder of the comments and responses related to those issues can be found in the Response to Comments document.

Comments regarding other issues raised as a result of the proposed and supplemental proposed rules are not included in this preamble or the Response to Comments document; they will be addressed, as appropriate, in future rulemakings addressing the residual risk and technology reviews for Refinery MACT 1.

A. Heat Exchange Systems

On November 10, 2008, we issued a supplemental proposal with our revised MACT floor and beyond-the-floor analysis. In general, the comments received on the cooling tower requirements initially proposed on September 4, 2007, either have been addressed through the supplemental proposal or are not applicable to the final standards (*e.g.,* clarifications to monitoring methods no longer required). Any general comments regarding cooling tower requirements received on the initial proposal that are still applicable are summarized in the Response to Comments document located in the docket (Docket ID No. EPA–HQ–OAR–2003–0146). Significant comments received on the supplemental proposal are addressed in this section.

1. MACT Floor for Heat Exchange Systems

Comment: A few commenters noted that the leak definition proposed for new heat exchange systems of 3.1 ppmv has not been ''demonstrated in practice.'' One commenter stated that the leak definition of 3.1 ppmv was developed by the State of Texas from the AP–42 emission factor. The commenter stated that only one cooling tower is operating under a permit with that limit (the other cooling towers are under construction), and this cooling tower has only recently begun operating, so there is no significant experience operating with the identified new source limit or applying it to the range of operations and ages of exchangers in a typical refinery. The commenter asserted that some heat exchangers and heat exchange systems are difficult to control, and different leak definitions are appropriate for different situations within an individual refinery, so a set of requirements must be demonstrated to be workable on multiple heat exchange systems of varying services and ages before that set of requirements can be considered ''demonstrated in practice.'' Another commenter stated that there is no demonstration that there is technology that can be applied to new sources that improves the emission performance of these systems when considered across the operating life of the facilities. Both commenters recommended setting the new source and existing source requirements equivalent at 6.2 ppmv. (One of the commenters noted that EPA's analysis shows that the next best controlled source has a limit of 5 ppmv, but the commenter noted that there is not much difference between the reductions achieved by a leak definition of 5 ppmv and a leak definition of 6.2, and 5 ppmv is not cost-effective. The commenter urged EPA to review cooling towers and heat exchange systems under CAA sections 112(d)(6) and 112(f)(2) and consider factors such as cost rather than developing a standard under CAA section 112(d)(2).)

One commenter noted that in the State of Texas, if a particular cooling tower cannot meet its normal leak definition of 80 parts per billion by weight (ppbw) VOC in the water, the State allows that source to set a leak definition of up to 150 ppbw VOC in the water. For flexibility when dealing with continuous small seepage or situations where the particular HAP or VOC present are not completely stripped by the cooling tower, the commenter suggested that in any 1-year period, if monitoring shows three leaks above 6.2 ppmv, but below 12 ppmv, EPA should allow that source to set a new leak definition of 12 ppmv.

Commenters stated that the leak definition of 6.2 ppmv VOC in the stripping gas is not stringent enough. One commenter noted that during cooling tower leak investigations conducted by the City of Houston and TCEQ, a potential leak measured at 2 ppm required sampling by summa canister to confirm the leak, and EPA's regulation should be at least that stringent. The commenter stated that a stringent leak threshold of 2 ppm will ensure that small leaks are found and repaired quickly, especially since the TCEQ leak threshold is 50 parts per billion by volume (ppbv).

Several commenters supported using the Modified El Paso Method to detect leaks but suggested that cooling towers that have higher recirculation flow rates should have lower leak definitions than cooling towers with lower flows because the large cooling towers will have higher mass emissions at the same leak concentration.

Commenters stated that EPA failed to consider the TCEQ Highly Reactive VOC (HRVOC) rule in establishing the MACT floor. The commenters believe the HRVOC rule is applicable to several refinery cooling towers, requires continuous monitoring, and it has a more stringent leak definition and leak repair schedule. One commenter also cited a California refinery that is required to install and operate a continuous hydrocarbon analyzer and repair leaks above an agreed threshold.

Response: The TCEQ El Paso Method has been demonstrated at numerous refineries and other similar sources as an effective means of identifying leaks in heat exchange systems. The method has been used extensively for over 20 years. As suggested by some commenters, the detection limit of the El Paso Method is generally less than 2 ppmv, so leaks of 3.1 ppmv are quantifiable. Ongoing monitoring at refineries indicates that, when no leaks are present or after repairs are made, El Paso monitoring is able to detect leaks well below this leak threshold. As such, the monitoring method and the corrective action measures have been adequately demonstrated.

In criticizing our new source leak definition of 3.1 ppmv, the commenter recognizes that heat exchangers connected to one refinery cooling tower are subject to a monitoring program with a leak definition of 3.1 ppmv. Section 112(d)(3) of the CAA provides that new source MACT cannot be less stringent than ''the emission control that is achieved in practice by the best controlled similar source.'' The commenter's concern that the facility has only recently begun operation and that there is not ''significant'' experience with the leak definition of 3.1 ppmv does not change the fact that this level is being achieved in practice and thus is the appropriate new source MACT floor. To the extent that the commenter suggests that the cooling towers meeting this limit are different and thus is presumably arguing that they must be subcategorized, the

commenter failed to submit any data supporting such a claim. As one commenter suggested, we cannot set the new source limit at 6.2 ppmv because we are establishing these requirements under CAA section 112(d)(2), and we cannot consider cost in setting the MACT floor. The requirements for heat exchange systems are appropriately developed under CAA section 112(d)(2) because a MACT standard had not been previously developed for this emissions source.

One commenter noted that the TCEQ allows some discretion in setting the total strippable VOC concentration limit or altering the limit based on the performance history of the cooling tower. We do recognize that the cooling tower leak definitions for total strippable VOC required in Texas refinery permits varied from 40 ppbw (or 3.1 ppmv) to 280 ppbw (22 ppmv), including within this range leak definitions at 60 ppbw, 80 ppbw, 150 ppbw, and 180 ppbw, but the 6th percentile facility had a leak definition of 80 ppbw, or 6.2 ppmv total strippable organics as methane. While some permits issued by TCEQ contain language that allows an alteration request or a permit amendment application, as the commenter noted, the permit issued for the 6th percentile cooling tower did not include this type of permit condition. As we cannot establish a requirement less stringent than the MACT floor, we do not provide a 12 ppmv leak definition under any circumstances.

Most of the commenters requesting lower leak definitions appear to misunderstand the stringency of the requirements for heat exchange systems included in the supplemental proposal. Based on the liquid and air flow rates specified in the TCEQ El Paso Method, and with the VOC measurements made as methane as required in the State permits and the supplemental proposal, a 3.1 ppmv VOC concentration in the gas stream from the El Paso stripping column is equivalent to 40 ppbw of strippable VOC (as methane) in the cooling water. The 6.2 ppmv leak threshold translates to a strippable VOC (as methane) in the cooling water of 80 ppbw.

The TCEQ HRVOC rule sets an action level that is 50 ppbw in the cooling water, not 50 ppbv in the stripping air as the commenter suggested. As such, the TCEQ HRVOC rule action level is actually slightly less stringent than the leak definition in the new source MACT requirements. Furthermore, the 50 ppbw threshold only triggers calculations of emissions, and not necessarily corrective action. Therefore, we disagree with commenters that suggest the HRVOC rule requirements are more stringent than the new or existing MACT floor requirements we established.

In our supplemental proposal, we specifically looked at lowering the leak definition for existing sources from 6.2 ppmv to 3.1 ppmv as part of our beyond-the-floor analysis, and determined that this was not cost-effective. Incrementally reducing the leak definition to 2 ppmv would be even less cost-effective than the option we evaluated. Furthermore, it would result in negligible additional emissions reductions, and it is very near the limit of detection of the El Paso Method. Therefore, we reject the option of setting the leak definition at 2 ppmv for new or existing sources because it is not cost-effective.

The commenter requesting different leak definitions for different-sized cooling towers is essentially asking for less control for small cooling towers (*i.e.,* an effective leak definition greater than 6.2 ppmv) and more control for larger cooling towers (*i.e.,* an effective leak definition less than 6.2 ppmv, and in some cases less than 3.1 ppmv). In our review of permits, we found no basis for subcategorizing the cooling towers by different recirculation rates. In addition, the suggested approach is inconsistent with the MACT floor requirements we identified for heat exchange systems.

We also disagree with the comments that claim we did not consider the HRVOC rule in our decision-making process. We found that most cooling towers that are subject to the HRVOC rule are associated with ethylene production units, and not refinery process units. As we specifically collected recent permit requirements for Texas refineries, to the extent there might be refinery cooling towers subject to the HRVOC rule, those requirements were considered in the development of the MACT floor. As explained above, we also disagree with the commenter's characterization of the stringency of the HRVOC rule in comparison with the new and existing MACT floors.

Our analysis indicated that repair provisions were more important in reducing heat exchange system emissions than using continuous monitoring. Contrary to the commenter's supposition, there are no repair schedules within the HRVOC cooling tower requirements. The commenter actually referenced the repair provisions for fugitive process equipment leaks (valves and pumps), which are not applicable to cooling towers. In the HRVOC rule, the action level is not a leak definition; rather, the leak definition is used to trigger more frequent monitoring for emission estimation and not specific repair requirements. In the HRVOC rules, facilities with cooling towers must meet an annual and an hourly site-wide HRVOC emissions cap. The hourly cap is quite high, and would not require any heat exchanger leaks to be repaired; the annual cap would tend to drive heat exchanger repairs. A medium-sized 30,000 gallon per minute cooling tower with a leak of 1,000 ppbw total VOC containing 20 percent HRVOC (as defined in the Texas rule) would have to repair within 45 days under the MACT floor requirements of this rule, but would not necessarily have to repair in 45 days to comply with the HRVOC rule, which sets a site-wide cap of 10 ton/yr (45 days of emissions would release 1.6 tons of HRVOC, under this scenario).

While different scenarios can be devised, the stringency of the Texas HRVOC rule is not as easy to categorize as the commenters suggest, and it could result in less emission reductions than the proposed new or existing source MACT floors.

Contrary to the commenter's assertion, we also reviewed and evaluated the permit requirements for the cited California refinery, and the permit was included in the docket. The permit, dated April 17, 2008, included a provision for a continuous monitor to be installed at a future date, to be determined, and the planned monitor was not being used at the time of our review. Additionally, based on the cooling tower's recirculation rate and the permitted VOC daily emission rate, the apparent action level (also not yet determined) is likely to be much higher than the leak definition for existing source MACT floors. In the cooling tower memorandum, we only summarized the information from the top-ranked cooling towers; the cooling tower at this California refinery was not included in the memorandum because, based on actual permit conditions, this cooling tower is not among the top-performing 12 percent of cooling towers.

While continuous monitoring was not used by the top-performing cooling towers, and, therefore, is not part of the floor requirements, we did evaluate requiring continuous monitoring in our beyond-the-floor analysis. However, the cost-effectiveness of this option exceeded half a million dollars per ton of HAP reduced, and, therefore, we did not require continuous monitoring as the standard. Rather, we adopted the floor as the MACT standard.

Comment: One commenter noted that the proposed recordkeeping and reporting requirements for heat exchange systems are unnecessarily burdensome, go far beyond the requirements for the MACT floor, and should be revised. For the Notice of Compliance Status, the commenter noted that ''heat exchange systems'' are an artifact of the regulation, do not normally have specific names, and will change from time to time, so the requirement to identify the heat exchange systems that are subject to the requirements of this subpart should be changed to a list of cooling towers that serve any heat exchange system or systems in organic HAP service. For periodic reports, the commenter stated that: (1) The number of heat exchange systems in HAP service will change over time, so the requirement to report that number should be deleted; (2) the requirement to report the number of heat exchange systems in HAP service found to be leaking should be changed to a request to identify exchangers found to be leaking; (3) the requirement to report the number of leaks in § 63.655(g)(9)(iii) duplicates the requirement in § 63.655(g)(9)(ii); (4) § 63.655(g)(9)(iii) should not require the reporting of measurements below the leak definition and should only ask for a summary of the leaks identified during the reporting period; (5) each 6-month period will include a lot of leaks, so there is no need to report the date of every leak (a record should be sufficient); (6) § 63.655(g)(9)(v) should be revised to reflect all delays and to address situations when a leak is detected in one reporting period and repaired in the next; and (7) reporting the estimate of VOC emissions for delay of repair should only be required when the delay of repair option was invoked. For recordkeeping, the commenter stated that: (1) Calculating the requested information for each heat exchanger in a refinery will take an estimated 40 hours per refinery and must be repeated every year; these burdens were not included in the information collection request (ICR) burden estimate and do not add value for exchangers that will not be monitored due to low HAP content, that do not contact HAP, or would not leak into the cooling water; (2) although sources will need a record of which heat exchange systems include exchangers in organic HAP service to comply with the monitoring requirements, identification of all heat exchangers is not necessary; and (3) the information requested in § 63.655(i)(4)(iii)(E) is sometimes available for whole cooling towers but not readily available for heat exchange exit lines or cooling tower return lines. The commenter stated that temporary heat exchangers and sample coolers should be excluded from these recordkeeping and reporting requirements.

Response: We reviewed the recordkeeping and reporting requirements identified by the commenter. We do not see how the heat exchange system will be as variable as the commenter suggested. We have revised the definition of heat exchange system to clarify our intent. We also: (1) Amended § 63.655(g)(9)(v) to more clearly indicate that all delayed repairs must be included and that delays may occur across reporting periods; (2) amended the reporting requirements in § 63.655(g)(9)(vi) to clarify that leak emission estimates are only required for an actual delay of repair; and (3) clarified in § 63.655(g)(9)(vi) that the flow rate is for the location where the monitoring occurs. It is anticipated that facilities will monitor at locations where the flow rate is known based on pump curves, heat balance calculations, or other engineering methods. A continuous flow monitor is not required, but a flow rate at the monitoring location is needed to assess the potential mass emissions associated with a leak. For the other comments, we find that the recordkeeping and reporting requirements are needed to document compliance with the rule. Specifically, identifying heat exchangers and heat exchange systems that are in organic HAP service, maintaining monitoring results, and reporting the date a leak is identified and repaired is essential for demonstrating compliance with the monitoring requirements.

2. Applicability Issues

Comment: One commenter supported changing the affected source from ''cooling towers'' to ''heat exchange systems,'' noting that it allows the facilities flexibility in monthly monitoring, leak tracking, and determining best sampling locations. Other commenters stated that Refinery MACT 1 should only apply to heat exchange systems that are part of cooling tower systems and should not apply to once-through cooling water systems. The commenters suggested that the supporting documentation indicates that only cooling tower heat exchange systems were evaluated, and, if EPA wants to finalize requirements for once-through cooling water systems, the requirements must be properly evaluated and the analyses provided for comment. One commenter stated that the emissions from once-through cooling systems are fundamentally different than systems with cooling towers since once-through systems do not have the air contact and stripping properties of cooling towers, and, as a result, a cost analysis of the two systems would show considerably different costs. The commenter also noted that the monitoring and repair techniques employed for the once-through systems are different than the monitoring for cooling tower systems, and these techniques should be evaluated for best demonstrated control technology (BDT) if once-through cooling systems are included in the rule. One commenter noted that, as proposed, the heat exchange system requirements apply to systems where the pressure gradient would not allow leakage into the cooling water. The commenter noted that these systems do not need monitoring, and a pressure gradient threshold of 35 kilopascals (kPa) should be included in the definition of ''heat exchange system'' to exempt these types of systems from Refinery MACT 1. Finally, the commenter stated that including the term ''cooling tower'' in the definition of ''heat exchange system'' could lead to confusion over the monitoring location requirements.

Response: EPA has developed MACT standards, such as the Hazardous Organic NESHAP (HON) and Ethylene MACT, for heat exchange systems, and these standards include once-through cooling water systems. Generally, the HON and Ethylene MACT standards allow alternative surrogate means of compliance that are equivalent to those standards. We considered and rejected these alternatives in the development of the requirements that we proposed for heat exchange systems and that we are now finalizing because the HON and Ethylene MACT standards are less stringent than our floor. We are not aware of any means of surrogate monitoring that would achieve identification of leaks equivalent to the floor level of monitoring required for refinery heat exchange systems.

We believe that control of once-through heat exchanger cooling systems is appropriate for several reasons, as outlined below. First, emissions of volatile HAP such as benzene occur readily from open water sources, which is why the Benzene Waste Operations NESHAP and the Refinery MACT 1 wastewater provisions require wastewater streams with benzene (as a surrogate for volatile HAP) to be covered and controlled until an appropriate treatment process is used to recover or destroy the benzene. While the stripping process may not be as fast as in a cooling tower, the once-through cooling

water will have a much longer exposure to the atmosphere than a system with a cooling tower. Thus, while the emissions may occur over a longer time period (over a larger area), all available scientific evidence and fate modeling studies of open water systems leads us to conclude that essentially all volatile HAP will be released into the atmosphere. As such, we see no reason why HAP leaks from heat exchange systems into once-through cooling water should be treated any differently than HAP leaks from heat exchange systems that have cooling towers.

Second, in conducting the MACT floor analysis for heat exchange systems presented in the supplemental proposal, we assumed that once-through cooling waters were included and that emissions from the once-through systems would be similar to those with recirculation of cooling waters. In reviewing the permits that formed the basis of the MACT floor analysis, we found that the majority did not indicate whether the system was once-through or recirculating. However, we note that some permits included text for monitoring of ''cooling towers'' and ''cooling tower water'' and some specified monitoring for ''heat exchanger system cooling water.'' The latter permits would appear to include once-through systems. Based on review of multiple references, the use of once-through cooling water in the petroleum refinery industry has been declining over the last 40 years, and is now a very small subset of the heat exchanger water systems. One reference indicated that a sample of facilities surveyed back in 1967 showed that only 5 percent of petroleum refineries were still using once-through cooling.[3] No more recent data could be found on how many refineries use once-through systems. A more recent study on once-through cooling systems for cogeneration facilities indicated that approximately 11 percent of non-utility plants that cogenerated power use once-through cooling; the 123 non-utility facilities included pulp and paper, chemical, iron and steel, aluminum, and petroleum refining industries.[4] Of the 123 facilities in the survey, four were confirmed petroleum refineries and three of these four sources provided a response to the survey. None of the three reported that once-through cooling systems were used.

Hypothetically, if we assumed that there were additional once-through cooling systems that were not included in our MACT floor analysis, we could assume that approximately 5 to 11 percent of the total cooling systems were once-through. The original number of cooling tower systems included in the MACT floor analysis was 520. If we assume that 5 to 11 percent of the cooling systems are once-through systems, then the total hypothetical number of cooling systems could range from 547 to 584 cooling systems. The MACT floor for these cooling systems would be based on the average emissions limitations achieved by the top 12 percent of cooling systems; the 6th percentile would be represented by the 33rd and the 35th cooling systems, respectively, for the hypothetical total number of cooling systems estimated to be 547 and 584. There would be no change in the MACT floor for existing sources for this hypothetical case. The MACT floor would be identical to the requirements in the supplemental proposal, *i.e.,* the 33rd and 35th ranked cooling systems have requirements to implement corrective action and heat exchange leak repairs when the strippable total VOC concentration in stripped air exceeds 6.2 ppmv. The owner or operator must identify the leaking heat exchanger, and repair at the earliest opportunity and no later than the next scheduled shutdown.

To the extent the commenters are suggesting that once-through systems should be treated as a separate subcategory, they have provided no information to support that subcategorization is appropriate.

We agree with the commenter and have clarified in § 63.654(b)(1) that the requirements do not apply to heat exchange systems where the minimum water-side pressure is 35 kPa greater than the maximum process-side pressure. We have also revised the definition of ''heat exchange system'' to identify the equipment that is included for closed-loop recirculation systems (systems with cooling towers), to identify the equipment that is included in the once-through systems, and to clarify that once-through systems are also regulated. Furthermore, definitions are provided for ''cooling tower return line'' and ''heat exchanger exit line'' to clarify the appropriate sampling locations. Sampling at either location is allowed; for once-through cooling systems, sampling is allowed at an aggregated location as long as it is before exposure to the atmosphere. To clarify this requirement, we have modified the definition of ''heat exchange exit line'' to be ''the cooling water line from the exit of one or more heat exchangers (where cooling water leaves the heat exchangers) to either the entrance of the cooling tower return line or prior to exposure to the atmosphere, whichever occurs first.''

3. Compliance Schedule for Heat Exchange Systems

Comment: Several commenters supported the originally proposed compliance date of 3 years and 90 days. One commenter noted that the reference to 90 days in CAA section 112(f)(4) has been misread by some to limit compliance time, but since it is expected that installation of controls necessitates a longer time to comply, the waiver provisions should only be considered if EPA set a compliance deadline less than 3 years. Some commenters noted that 18 months should be sufficient for all new requirements, as industry is already familiar with many of the processes to be controlled and are already regulating these emissions.

Several commenters addressed the compliance dates relative to the supplemental proposal. For new sources, commenters noted that these requirements will be promulgated only 2 months after they were proposed in the supplemental proposal, which is inadequate time in which to have monitors purchased and operating. The commenters asserted that EPA should provide 1 year for new sources to comply with the standards.

Commenters specifically noted that although many Texas refiners are currently familiar with the monitoring methods required for heat exchange systems, it took years for them to gain that familiarity, and it will take time for other refiners to learn to perform the methods efficiently. One commenter noted that when monitoring begins, there will be an initial period in which multiple repairs are necessary, some of which may require shutdowns. The commenters recommended that EPA provide the full 3 years provided by the CAA for compliance with heat exchange system requirements; this additional time would allow refiners to become familiar with the monitoring method and to complete initial repairs during already scheduled shutdowns and turnarounds. Conversely, several commenters stated that the cooling tower standards should be implemented in 1 year rather than progressively over 3 years as proposed in the supplemental proposal. Another commenter stated that the 18-month compliance schedule for heat exchange systems in the supplemental proposal is preferable to

[3] Gibbons, DC. *The Economic Value of Water.* Published by Resources for the Future. 1986.

[4] Veil, J., M. Pruder, D. Littleton, and D. Moses. ''Cooling Water Use Patterns at U.S. Nonutility Electric Generating Facilities.'' *Environmental Science and Policy.* 2000.

the 3-year (and 90 days) compliance schedule in the original proposal.

Response: As an initial matter, we note that the originally proposed compliance schedule (*i.e.,* 3 years and 90 days) should not have included the additional 90 days. Section 112(i)(3) of the CAA provides that existing sources must comply within ''3 years after the effective date'' of the standard. With respect to the 18-month compliance timeframe specified in our supplemental proposal, we agree that the commenters have made valid points supporting adoption of a 3-year compliance period instead. The comments that many refineries do not have experience with the TCEQ El Paso Method is supported by our review of cooling tower requirements for different States. We believe that some sources will need up to the full 3 years allowed under CAA section 112(i)(3) based on the estimated length of time required for refiners to survey the heat exchangers, identify those in organic HAP service, install the necessary sampling ports, purchase the Modified El Paso sampling system, familiarize themselves with the test method, and provide training to their employees. In addition, refiners will need to take steps to be prepared to repair leaking heat exchange systems. This includes performing initial sampling to identify heat exchangers that are prone to leakage or are in critical service, identify means to isolate or repair heat exchangers online, and to order and stock necessary equipment and spare parts.

With respect to new source requirements, the CAA specifies that such sources must comply upon start-up or the date of publication of the final rule, whichever is later. We note that, based on the definition of an affected source in the Refinery MACT 1 rule, a construction project significant enough to trigger the new source provisions is likely to take years to complete, and that any source undertaking such project has been on notice since our initial proposal that cooling tower monitoring (or heat exchange system monitoring) would be required.

4. Delay of Repair Provisions

Comment: Commenters noted that the new source delay of repair standards are based on cooling towers that are not yet operational, so those permit conditions are not ''achieved in practice.'' The commenters argued that it takes time after startup of new facilities to determine if new, previously untested requirements are achievable or whether permit modifications are needed; it is also unknown if Texas will allow deviations from permit conditions and under what conditions for heat exchange system repairs. The commenters stated that the new source delay of repair standards must instead be based on ''Repair and Delay 2'' as described in Table 1 of EPA's supporting memorandum (which the commenter thought were the requirements for the existing source floor).

One commenter supported the 45-day repair allowance and delay of repair allowances. Another commenter stated that the maximum delay of repair should be 60 days because refineries already have 18 months to comply. Some commenters expressed concern that EPA proposed to disallow delay of repair for leaks above 62 ppmv after 3 years and noted that EPA has not demonstrated the rationale for removing that allowance. One commenter stated that EPA needs to address the situation in which multiple small leaks occur at multiple heat exchangers and the cumulative effect at the cooling tower return line is a leak above 62 ppmv. The commenters stated that unplanned shutdowns are expensive and disruptive, but would be necessary when repair is infeasible without a shutdown. One commenter requested that EPA allow owners and operators to request delay of repair on a case-by-case basis when justified.

Response: The supplemental proposed MACT floor for both new and existing sources is repair within 45 days for leaks of 62 ppmv or greater. In establishing the floor, we found that the no delay of repairs requirement for large leaks has been implemented and required for 35 cooling towers at numerous facilities. Also, both the top-ranked and 6th percentile cooling tower had identical requirements excluding large leaks from delay of repair. As such, this requirement has been implemented and has been adequately demonstrated and it establishes the minimum floor requirement. In the supplemental proposal, we proposed to allow delay of repair for large leaks for the 18 month phase-in of the repair requirements, which correspond to the ''Repair and Delay 2'' provisions cited by the commenter. However, we have concluded that these temporary delay of repair provisions were not equivalent to the requirements for the MACT floor for existing heat exchange systems, which is why they were only temporary provisions in the supplemental proposal. Additionally, the 3-year compliance timeframe in the final rule will allow facilities sufficient time to resolve these initial problems. As discussed previously, we are now implementing all heat exchange system requirements for existing sources on the same 3-year schedule. Upon implementation of the required monitoring provisions, it is anticipated that leaks will be identified well before they become large. Thus, while delay of repairs are allowed for small leaks, it is the refinery owner or operator's responsibility to order necessary parts and schedule a repair before the leak exceeds the 62 ppmv threshold. Negligence on the part of the owner or operator regarding this responsibility is not a reasonable justification for providing delay of repair provisions for large leaks. Consistent with the requirements that apply to the units which provided the basis for the MACT floor, any leak greater than 62 ppmv that is not repaired in the timelines provided in the rule is a deviation of the standard and subject to enforcement actions at the discretion of the Agency or permitting authority.

5. Monitoring Alternatives

Comment: Commenters noted that the concentration of heavy organic HAP and water soluble HAP can build up in recirculating cooling tower systems, and since the El Paso Method involves more vigorous stripping than occurs in a cooling tower, monitoring might falsely indicate a leak. The commenters suggested that, as an alternative, sources should be allowed to use methods they are presently using, including testing the inlet water to a heat exchange system and using the difference between the outlet and the inlet to determine if the leak definition is exceeded. One commenter noted that if once-through cooling systems continue to be considered affected facilities by EPA, it is important for the requirements to consider the baseline of HAP (or surrogate VOC) emissions in the inlet to the system so that facilities are only responsible for assessing any ''increase'' in the pollutant attributed to the operating facility, not pollutants in the water basin upstream of the facility. Another commenter requested that EPA allow owners or operators to demonstrate that another monitoring method such as a continuous emission monitoring system or parameter monitoring is equivalent to the monitoring methods specified for heat exchange systems. One commenter requested that EPA continue to allow the method originally proposed as well as a relatively new analytical method for early detection developed by Baker Petrolite. Another commenter stated that the El Paso Method measures VOC in the air, and EPA should allow any monitoring method that has adequate sensitivity to measure 80 ppbw of

strippable VOC in the water or for a surrogate that can be correlated to strippable VOC and can be measured at a level that would indicate a leak of 80 ppbw of strippable VOC in the water for a particular heat exchange system. This monitoring flexibility would be helpful to confirm El Paso results as well as more efficient for sources that are required to conduct other types of monitoring by their State or local agency or for compliance with another Federal regulation (such as the HON).

Response: We acknowledge that some refineries have specific monitoring systems in-place and that the use of these monitoring systems would ease the burden on the refinery owner or operator. However, we are not aware of any practical alternatives that we can specify that provide an equivalent measure of strippable organics. Nor have any of the commenters provided evidence that a specific alternative method would result in an equivalent measure. For example, we have reviewed the ''method for early detection developed by Baker Petrolite'' and found that the detection level for most individual compounds is much higher than the total strippable VOC concentrations that define a leak for the MACT floor facility. That is, this method would not be able to identify small to medium-sized leaks that would be identified and would be required to be fixed by the MACT requirements for heat exchange systems.

Although we expect the El Paso column to mimic the stripping that occurs in the cooling tower, the amount of stripping that occurs in the cooling tower is dependent on the design and operation of the cooling tower. Moreover, the purpose for the use of the El Paso Method is to detect leaks in heat exchange systems, not to estimate emissions. Consequently, we do not believe that analytical methods based on the measurement of single constituents or that employ inlet/outlet cooling tower water sampling are equivalent to the El Paso Method for determining strippable VOC. That is, these alternative methods would not result in the same corrective action thresholds as the prescribed monitoring technique.

The commenters have provided no evidence that a build-up of heavy organics would cause a heat exchange system to exceed a leak definition of 6.2 ppmv total strippable VOC, nor have they provided compelling evidence that such a leak would not result in any air emissions. While we agree that the relative stripping efficiency of a given cooling tower will not necessarily match the stripping efficiency of the El Paso stripping column, it is unreasonable to conclude that the cooling tower will have no HAP emissions. Furthermore, the majority of HAP included in Table 1 are volatile. Thus, for a heat exchange system that is ''in HAP service,'' we believe it is appropriate to initiate corrective action if the leak threshold is exceeded because that corrective action will result in reduced HAP emissions.

As stated previously, the goal of the heat exchange system provisions is to identify and fix leaks at the heat exchanger to reduce subsequent emissions of HAP. For once-through cooling systems, we believe it is unlikely that the strippable organics concentration in the inlet water would exceed the leak threshold. Further, the commenters have provided no evidence that the fresh water feed for a once-through heat exchange system could contain enough strippable organics to cause a heat exchange system to exceed a leak definition of 6.2 ppmv total strippable VOC. Therefore, we have not provided any alternative leak detection procedure for once-through heat exchangers.

Comment: Commenters supported allowing the facility to demonstrate that a leak is not in a heat exchanger that is in HAP service. One commenter stated that if VOC testing indicates a leak in a heat exchange system, the facility should be allowed to speciate the compounds in the leak to determine if the leak is a HAP leak. Another commenter agreed, noting that proposed § 63.654(e) requires monitoring of every individual exchanger in organic HAP service in a heat exchange system in order to prove that the leak is not from an exchanger in organic HAP service. The commenter stated that this requirement is very costly and recommended three alternatives: (1) The owner or operator should be allowed to determine the species in the process or processes served by the cooling tower to determine if the process is in HAP service; (2) the owner or operator should be allowed to speciate the sample from the cooling tower return line to determine the leaking heat exchanger; and (3) the owner or operator should be allowed to sample groups of heat exchangers rather than each individual heat exchanger.

One commenter noted that the supplemental proposal appears to only allow sampling at the outlet of each heat exchanger or at the inlet to a cooling tower, but it is often preferred to sample at branch points in cooling tower return piping for several reasons: (1) Only a particular branch has exchangers in HAP service; (2) it is easier to identify the source of any leak that does occur; or (3) a particular cooling tower is shared among administrative units and compliance is more readily achieved if each unit is responsible for its own heat exchangers. The commenter also noted that the language is inconsistent with the definition of ''heat exchange system,'' which can be any number of exchangers, not just one exchanger or all exchangers in a particular cooling water loop. The commenter suggested revisions to the definition of ''cooling tower return line'' to clarify the requirement.

Response: The purpose for the rule is to find and fix leaks for heat exchange systems in organic HAP service. If a leak is detected at a cooling tower return line or in a once-through system, the owner/operator can find and fix the leak by any means possible, including the means specified by the commenters. If, however, the owner/operator does not want to fix the leak because they believe that the leak is caused by heat exchangers that are not in organic HAP service, the only way to definitively prove that is to test the individual or groups of heat exchangers in organic HAP service that make up the system in which a leak has been detected.

The Texas permit data and TCEQ El Paso Method is based on strippable VOC. We found that this is an appropriate surrogate for HAP emissions for cooling towers that are in HAP service. A refinery may use speciation of the El Paso column stripping air or other methods at their discretion to determine the location of the leak. However, we cannot provide, based on the MACT floor requirements, an alternative action level that defines a HAP leak as opposed to a VOC leak, as the commenter proposes.

We have made minor adjustments to the final standards to allow our intended outcome of alternative 3, as described by the commenter. Specifically, we have clarified the definition of heat exchanger exit line to include water lines from ''one or more heat exchangers.'' This clarification is intended to allow monitoring using the Modified El Paso Method from each heat exchanger *or group of heat exchangers* in organic HAP service upstream of the cooling tower return line. For example, if three process units are served by one heat exchange system and multiple heat exchangers are grouped by process unit and the three return lines combine before the main cooling tower return line, then the owner or operator may choose to measure each of the three return lines associated with a process unit in organic HAP service. If monitoring at those points results in concentrations less

than the leak definition, then no repair is necessary.

6. Impact Estimates for Cooling Towers

Comment: Several commenters argued that EPA's estimates of baseline emissions were based on faulty and unsupported premises. One commenter stated that the model cooling tower sizes understate the emissions because the average flow rate is a factor of 2 less than in a study performed by the Galveston-Houston Association for Smog Prevention (GHASP). One commenter said the emissions are understated because they do not include HAP emissions from SSM events. Two commenters questioned the use of TCEQ inventory data. One commenter stated that the TCEQ inventory appears to be biased low for HAP when compared to the Toxics Release Inventory (TRI) reported releases (on a plant-wide basis). The other commenter suggested that EPA mistakenly assumed the TCEQ data were based on controlled emission factors in projecting the baseline emissions ranging from 352 to 2,300 ton/yr because of the guidance provided in the 2006 TCEQ inventory guidelines for cooling towers. The commenter also cited a report by URS Corporation where two high rate leaks were identified as evidence that the baseline emission rates were too low.

Two commenters stated that the cooling tower impacts do not account for the maximum emissions allowed under the proposed MACT standard. According to the commenters, the cooling tower impacts assume 50 percent of leaks are fixed as soon as possible rather than the 45 days allowed in the proposed rule, and they do not account for permitted delay of repair for up to 120 days. Also, the commenters stated that the EPA did not justify the 50 percent assumption for delay of repair and should assume all refineries will delay repair.

Two commenters also cited variability in the emissions from cooling towers as a concern. One commenter stated that the use of a single average HAP content for the cooling tower emissions estimates does not consider the range of potential HAP concentrations. Another commenter questioned the use of 2004 TCEQ inventory data by comparing the 2004 TCEQ inventory for selected refineries with TCEQ data for 2005 and 2006, which showed that the quantity and composition of emissions is variable from year to year. According to this commenter, EPA failed to account for this variability or provide rationale as to why the 2004 emissions data are representative, and, therefore, the analysis fails to capture all refinery emissions and is unlawful.

Response: We disagree with the commenters that state that the cooling tower emissions were understated or otherwise not properly characterized when developing the impact estimates. With respect to the cooling tower sizes, the GHASP study includes refineries and chemical plants, and the data are skewed by several large cooling towers, which we believe are associated with petrochemical (ethylene) plants and not refineries. Eliminating the three largest cooling towers of the 54 cooling towers in the GHASP dataset brings the data (which include only the Houston area, which has larger than average-sized refineries) in reasonable agreement with the projected size-distribution of cooling towers (the mean cooling tower recirculation rate in the GHASP data is reduced from a factor of 200 percent to a factor of 50 percent above the mean flow rate in our impacts analysis). The TCEQ emissions data and the AP–42 emission factors are the best available data by which to estimate cooling tower emissions. The TRI does not provide emissions breakdown by source, so it is impossible to determine what emissions in the TRI are associated with cooling towers.

We specifically consider SSM emissions in the cooling tower impacts. Heat exchanger leaks that result in cooling tower emissions are a type of malfunction. If the units operate as designed, there would be no emissions from the cooling towers. No additional emissions are expected specific to cooling towers during startup or shutdown events. The requirements for monitoring and repairing heat exchange systems directly address malfunction emissions.

We also note that selected short-term emissions from selected heat exchanger leaks are not indicative of the average long-term emissions that are appropriate for estimating chronic effects or life-time cancer incidence. Not all heat exchange systems leak every year, and the leaks that do occur do not last all year long. Note also that two of the ''leaks'' identified in the cited study were comparable to the *controlled* AP–42 emission factor. Our impact estimates directly account for the fact that some heat exchangers do not have leaks at all, some have small leaks, and some have large leaks. We compared emission estimates using a variety of methods and determined that the baseline and controlled emission estimates were as accurate and unbiased as we could develop.

The commenters also incorrectly characterized our emission estimates with respect to repair times. For cooling towers that were assumed to be repaired as soon as possible, we used the full 45-day repair allowance plus 15 days (one-half the monitoring frequency) for estimating the duration of the leak. Leaks may occur any time between monitoring events, but 15 days provides the best estimate of the average leak duration prior to identifying the leak. Once a refinery owner or operator measures a leak and identifies its source, they will also know what actions are needed to reduce the leak. In some instances, the refinery owner or operator will find that the cost of repairing the leak is easily offset by the recovery of the leaking product or process stream. In these cases, the refinery owner or operator will elect to repair the leak rather than delay repair. While data are limited, our best engineering estimate is that roughly 50 percent of leaks will be repaired within the first 45 days simply because it is economical to do so. For the 50 percent of leaks for which repair is delayed, 120 days was used as the duration of the leak when estimating the emissions from these units.

With respect to the TCEQ data, we are confident that the controlled AP–42 emission factors were generally used. Public comments were received on the original proposal requesting that corrections be made to the emissions data for the highest emitting cooling towers in the TCEQ dataset because the uncontrolled AP–42 emission factor had been incorrectly used, and that the controlled AP–42 emission factor should be used. We also note that TCEQ's 2006 guidance on use of AP–42 emission factors cited by the commenter came out well after the 2004 inventory was developed, so its use was not possible. Finally we note that, if the TCEQ inventory estimates were based on uncontrolled emission factors, then the 352 ton/yr projection from the TCEQ data would be the upper-end of the range, which would make the baseline emission estimate lower, not higher.

Finally, while leaks from heat exchangers that give rise to cooling tower emissions are inherently random and variable, our analysis was specifically designed to provide an estimate of the long-term (life-time) exposure from cooling tower emissions. Assuming that all leaks come from a specific unit with high HAP content, that all leaks are big, and that all repairs will be delayed provides a completely unrealistic picture of long-term emissions. When assessing short-term exposure, we multiplied our long-term emissions by a factor of 10, which

effectively accounts for the variability in emissions cited by the commenters.

Comment: One commenter stated that cooling tower emission reductions are estimated by EPA to be 4 to 10 percent, but the GHASP Report 2006 shows reductions on the order of 90 percent. As such, the commenter suggested that the emission and emission reduction estimates are unreasonable and conclusions drawn from the emission estimates are unreliable.

Response: The analysis includes all emission sources covered under the Refinery MACT 1 regulation. If, at baseline, cooling towers represent only 5 percent of a refineries HAP emissions, a 90-percent reduction in cooling tower emissions would only result in a 4.5-percent reduction in the nationwide baseline HAP emissions from refineries. The cooling tower impact memo (Docket ID No. EPA–HQ–OAR–2003–0146–0143) indicates that the proposed MACT requirements for cooling towers will result in an 82-percent reduction in VOC and HAP emissions from cooling towers, which is in reasonable agreement with the reduction estimates in the GHASP Report 2006.

B. General Provisions Applicability

Comment: One commenter supported the revisions to Table 6 of Refinery MACT 1 in the supplemental proposal but had a few suggested revisions. First, the commenter noted that EPA proposed that §§ 63.5(d)(1)(iii), (2), and (3)(ii) apply to Refinery MACT 1. The commenter stated that this change would require owners and operators to include considerable emission and control information in requests to construct or reconstruct, and this information has not previously been required. In particular, the commenter noted that the proposal to require measured emission data in the Notice of Compliance Status required by § 63.5(d)(1)(iii) would be very costly, and the permitting authority is the best party to identify where testing is required to confirm mass emission limitations are being met. The commenter recommended that EPA not finalize this proposed requirement; if finalized, the requirements should only apply to construction or reconstruction that commenced after September 7, 2007.

Second, the commenter stated that § 63.8(b)(2), which EPA proposed should apply to Refinery MACT 1, specifies monitoring location requirements that may conflict with existing monitoring locations. If owners or operators do not already have monitors in locations that comply with § 63.8(b)(2), they could be out of compliance on the date these requirements are finalized. The commenter noted that EPA has not evaluated the impacts of these efforts, and no additional compliance time has been provided, so EPA should not finalize this proposal.

Finally, the commenter noted that EPA proposed to require Refinery MACT 1 sources to comply with §§ 63.1(b)(3) and 63.10(b)(3), which require owners and operators to keep ''negative'' records. The commenter stated that these records serve no purpose and have not been kept in the past.

Response: We have reviewed the General Provisions (40 CFR part 63, subpart A) and Table 6 of Refinery MACT 1 as included in the supplemental proposal, and we have determined that the emission estimates in § 63.5(d)(1)(ii)(H) and the emission measurements in § 63.5(d)(1)(iii) are not necessary. Given the types of emission sources affected by Refinery MACT 1, estimating the emissions ''* * * in units and averaging times specified by the relevant standard'' is not relevant for most of the sources. The permitting authority has a right to require HAP emission estimates for Refinery MACT 1 process units, but the permitting authority has discretion on what emission estimates are needed. Paragraph 63.5(d)(1)(iii) is unworkable for most Refinery MACT 1 emission sources as these sources do not lend themselves to direct emission measurements. However, the information required under § 63.5(d)(2) and (3) is reasonable and necessary information needed by permitting agencies and we are including these requirements from the General Provisions in Table 6 of Refinery MACT 1 in the final amendments.

Paragraph 63.8(b)(2) provides specific guidelines and options for monitoring when emissions from two or more affected sources are combined before being released into the air. While Refinery MACT 1 does specify locations to conduct monitoring, it does not address instances where multiple emission sources are combined. We find that § 63.8(b)(2) provides useful guidance that does not contradict or otherwise alter the monitoring locations specified in Refinery MACT 1. As such, we are specifying in Table 6 of Refinery MACT 1 that § 63.8(b)(2) applies.

We agree with the commenter that §§ 63.1(b)(3) and 63.10(b)(3) should not apply because the records required in these sections apply to applicability determinations that have long been completed and the records required under these sections would no longer need to be retained because they would be over 5 years old. Furthermore, the amendments specify the records needed for the new heat exchange system requirements specified under these sections are not necessary.

V. Summary of Impacts

The total capital investment cost of the final amendments is estimated at $16 million. The total annualized cost of the controls required by the final amendments is expected to be $3.0 million, which includes $2.2 million credit for recovery of lost product and the annualized cost of capital. The final amendments will achieve a nationwide HAP emission reduction of about 630 ton/yr with a concurrent reduction in VOC emissions of about 4,100 ton/yr. Table 1 of this preamble summarizes the cost and emission reduction impacts of the final standards.

TABLE 1—NATIONWIDE IMPACTS OF HEAT EXCHANGE SYSTEM STANDARDS

Affected source	Total capital investment ($ million)	Total annualized cost without recovery ($ million)	Product recovery credit ($ million)	Total annualized costs ($ million/yr)	HAP emission reductions (ton/yr)	Cost-effectiveness ($/ton HAP)
Heat exchange systems	16	5.2	(2.2)	3.0	630	4,700

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it may raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866, and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The information collection requirements are not enforceable until OMB approves them.

The information requirements in the final amendments include monitoring, recordkeeping, and reporting provisions for cooling towers. Owners or operators of cooling towers must conduct monthly monitoring of each heat exchanger to identify and repair leaks. Records of monitoring and repair data also must be kept. All respondents must submit one-time notifications and semiannual compliance reports.

The information collection requirements in this final rule are needed by EPA and delegated authorities to determine that compliance has been achieved. The recordkeeping and reporting requirements in this final rule are based on the information collection requirements in the part 63 General Provisions (40 CFR part 63, subpart A). The recordkeeping and reporting requirements in the General Provisions are mandatory pursuant to section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is safeguarded according to CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 13,647 labor hours per year at a cost of $1,048,783 for one new refinery and 153 existing refineries. The average annual reporting burden is 2,825.72 labor hours for 154 total annual responses; the average annual burden per response is 18.35 hours. Responses include Notifications of Compliance Status for cooling towers at new and existing refineries and semiannual compliance reports containing information on cooling towers at new and existing refineries. Capital/startup costs are estimated at $16,306,000. The operation and maintenance costs associated with the final rule amendments are estimated at $61,711. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule. This amendment updates the table to list the information collection requirements being promulgated today as amendments to the NESHAP for petroleum refineries.

EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfy the requirements of the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses at 13 CFR 121.201 (a firm having no more than 1,500 employees); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Based on our economic impact analysis, the amendments will result in a nationwide net annualized cost of about $3.0 million, which includes a credit of about $2.2 million per year from reductions in product losses. Of the 24 small entities that would incur annualized costs as a result of the final amendments, annualized costs for each of them are below 0.02 percent of revenues; therefore, no adverse economic impacts are expected for any small entity. Thus, the costs associated with the final amendments will not result in any ''significant'' adverse economic impact for any small or large entity.

D. Unfunded Mandates Reform Act

This final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector in any one year. As discussed earlier in this preamble, these amendments result in nationwide costs of $3.0 million per year for the private sector. Thus, the final rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA).

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The final amendments contain no requirements that apply to such governments, and impose no obligations upon them.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The final amendments do not have federalism implications. They would

not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. These final amendments add control and performance demonstration requirements. They do not modify existing responsibilities or create new responsibilities among EPA Regional offices, States, or local enforcement agencies. Thus, Executive Order 13132 does not apply to the final amendments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The final amendments will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The final amendments impose no requirements on tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that the final amendments are not likely to have any adverse energy effects because they result in overall savings due to product recovery.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law No. 104–113, (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

This final rule involves technical standards. EPA has decided to use ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources,'' Revision Number One, dated January 2003, and will incorporate the method by reference (see 40 CFR 63.14). This method is available at *http://www.tceq.state.tx.us/assets/public/implementation/air/sip/sipdocs/2002-12-HGB/02046sipapp_ado.pdf*, or from the Texas Commission on Environmental Quality (TCEQ) Library, Post Office Box 13087, Austin, Texas 78711–3087, telephone number (512) 239–0028. This method was chosen because it is an effective means to determine leaks from heat exchangers and it is the method used in the best performing facilities. This TCEQ method utilizes a dynamic or flow-through system for air stripping a sample of the water and analyzing the resultant off-gases for VOC using a common flame ionization detector analyzer. While direct water analyses, such as purge and trap analyses of water samples utilizing gas chromatography and/or mass spectrometry techniques, have been shown to be effective for cooling tower measurements of heavier molecular weight organic compounds with relatively high boiling points, it has been determined that this approach may be ineffective for capture and measurement of VOC with lower boiling points, such as ethylene, propylene, 1,3-butadiene, and butenes. The VOC with a low molecular weight and boiling point are generally lost in the sample collection step of purge/trap type analyses. Consequently, this TCEQ air stripping method is used for cooling tower and other applicable water matrix emission measurements of VOC with boiling points below 140 °F.

Under §§ 63.7(f) and 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the final rule and amendments.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

This rulemaking will achieve significant reductions of HAP emissions from cooling towers located at petroleum refineries. Exposure to HAP emissions raises concerns regarding environmental health for the United States population in general, including the minority populations and low-income populations that are the focus of the Environmental Justice Executive Order.

The emission reductions from the new standards finalized in the petroleum refinery rule will have beneficial effects on communities in proximity to petroleum refineries, including low-income and minority communities. For example, the new standards for cooling towers will reduce air toxics emissions from petroleum refineries by 630 tons and VOC emissions by 4,100 tons annually.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller

General of the United States prior to publication of the final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final rule will be effective on October 28, 2009.

List of Subject for 40 CFR Parts 9 and 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: October 15, 2009.

Lisa P. Jackson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135, *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251, *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857, *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. The table in Section 9.1 is amended by:

■ a. Removing the entry for 63.654 under the heading ''National Emission Standards for Hazardous Air Pollutants for Source Categories''; and

■ b. Adding an entry for 63.655 in numerical order under the indicated heading to read as follows:

§ 9.1 OMB Approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories [3]	
* * * * *	
63.655	2060–0340
* * * * *	

[3] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

* * * * *

PART 63—[AMENDED]

■ 3. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart A—[Amended]

■ 4. Section 63.14 is amended by adding paragraph (n) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(n) The following material is available from the Texas Commission on Environmental Quality (TCEQ) Library, Post Office Box 13087, Austin, Texas 78711–3087, telephone number (512) 239–0028 or at *http://www.tceq.state.tx.us/assets/public/implementation/air/sip/sipdocs/2002-12-HGB/02046sipapp_ado.pdf*:

(1) ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources,'' Revision Number One, dated January 2003, Sampling Procedures Manual, Appendix P: Cooling Tower Monitoring, prepared by Texas Commission on Environmental Quality, January 31, 2003, IBR approved for § 63.654(c)(1) and (g)(4)(i) of subpart CC of this part.

(2) [Reserved]

Subpart CC—[Amended]

■ 5. Section 63.640 is amended by:

■ a. Revising paragraph (a) introductory text;

■ b. Revising paragraph (b)(2);

■ c. Revising paragraph (c) introductory text;

■ d. Revising paragraphs (c)(6) and (c)(7);

■ e. Adding paragraph (c)(8);

■ f. Revising paragraphs (e) introductory text, and (e)(2)(iii);

■ g. Revising paragraphs (f) introductory text, and (f)(5);

■ h. Revising paragraph (h) introductory text;

■ i. Revising paragraphs (h)(1) and (h)(2);

■ j. Revising paragraph (h)(4);

■ k. Adding paragraph (h)(6);

■ l. Revising paragraphs (k)(1), (k)(2)(i), (k)(2)(ii), (k)(2)(iii), and the first sentence in paragraph (k)(2)(vi);

■ m. Revising paragraphs (l) introductory text, and (l)(2)(i), the first sentence in paragraph (l)(2)(ii), the first sentence in paragraph (l)(3) introductory text, paragraphs (l)(3)(i) and (l)(3)(ii), the first sentence in paragraph (l)(3)(vi), and the first sentence in paragraph (l)(3)(vii); and

■ n. Revising paragraph (p) to read as follows:

§ 63.640 Applicability and designation of affected source.

(a) This subpart applies to petroleum refining process units and to related emissions points that are specified in paragraphs (c)(5) through (c)(8) of this section that are located at a plant site and that meet the criteria in paragraphs (a)(1) and (2) of this section:

* * * * *

(b) * * *

(2) The determination of applicability of this subpart to petroleum refining process units that are designed and operated as flexible operation units shall be reported as specified in § 63.655(h)(6)(i).

(c) For the purposes of this subpart, the affected source shall comprise all emissions points, in combination, listed in paragraphs (c)(1) through (c)(8) of this section that are located at a single refinery plant site.

* * * * *

(6) All marine vessel loading operations located at a petroleum refinery meeting the criteria in paragraph (a) of this section and the applicability criteria of subpart Y, § 63.560;

(7) All storage vessels and equipment leaks associated with a bulk gasoline terminal or pipeline breakout station classified under Standard Industrial Classification code 2911 located within a contiguous area and under common control with a refinery meeting the criteria in paragraph (a) of this section; and

(8) All heat exchange systems associated with petroleum refining process units meeting the criteria in paragraph (a) of this section and which are in organic hazardous air pollutants (HAP) service as defined in this subpart.

* * * * *

(e) The owner or operator of a storage vessel constructed on or before August 18, 1994, shall follow the procedures specified in paragraphs (e)(1) and (e)(2) of this section to determine whether a storage vessel is part of a source to which this subpart applies. The owner or operator of a storage vessel constructed after August 18, 1994, shall follow the procedures specified in paragraphs (e)(1), (e)(2)(i), and (e)(2)(ii) of this section to determine whether a storage vessel is part of a source to which this subpart applies.

* * * * *

(2) * * *

(iii) If the predominant use of a storage vessel varies from year to year, then the applicability of this subpart shall be determined based on the utilization of that storage vessel during the year preceding August 18, 1995.

This determination shall be reported as specified in § 63.655(h)(6)(ii).

(f) The owner or operator of a distillation unit constructed on or before August 18, 1994, shall follow the procedures specified in paragraphs (f)(1) through (f)(4) of this section to determine whether a miscellaneous process vent from a distillation unit is part of a source to which this subpart applies. The owner or operator of a distillation unit constructed after August 18, 1994, shall follow the procedures specified in paragraphs (f)(1) through (f)(5) of this section to determine whether a miscellaneous process vent from a distillation unit is part of a source to which this subpart applies.

* * * * *

(5) If the predominant use of a distillation unit varies from year to year, then the applicability of this subpart shall be determined based on the utilization of that distillation unit during the year preceding August 18, 1995. This determination shall be reported as specified in § 63.655(h)(6)(iii).

* * * * *

(h) Except as provided in paragraphs (k), (l), or (m) of this section, sources subject to this subpart are required to achieve compliance on or before the dates specified in paragraphs (h)(1) through (h)(6) of this section.

(1) Except as provided in paragraphs (h)(1)(i) and (iv) of this section, new sources that commence construction or reconstruction after July 14, 1994, shall be in compliance with this subpart upon initial startup or August 18, 1995, whichever is later.

(i) [Reserved]

(ii) Heat exchange systems at new sources that commence construction or reconstruction after August 18, 1995, but before September 4, 2007, shall comply with the existing source requirements for heat exchange systems specified in § 63.654 no later than October 29, 2012.

(iii) [Reserved]

(iv) Heat exchange systems at new sources that commence construction or reconstruction after September 4, 2007, shall be in compliance with the new source requirements in § 63.654 upon initial startup or October 28, 2009, whichever is later.

(2) Except as provided in paragraphs (h)(3) through (h)(6) of this section, existing sources shall be in compliance with this subpart no later than August 18, 1998, except as provided in § 63.6(c)(5) of subpart A of this part, or unless an extension has been granted by the Administrator as provided in § 63.6(i) of subpart A of this part.

* * * * *

(4) Existing Group 1 floating roof storage vessels shall be in compliance with § 63.646 of this subpart at the first degassing and cleaning activity after August 18, 1998, or August 18, 2005, whichever is first.

* * * * *

(6) Heat exchange systems at an existing source shall be in compliance with the existing source standards in § 63.654 no later than October 29, 2012.

* * * * *

(k) * * *

(1) The reconstructed source, addition, or change shall be in compliance with the new source requirements upon initial startup of the reconstructed source or by August 18, 1995, whichever is later; and

(2) * * *

(i) The application for approval of construction or reconstruction shall be submitted as soon as practical before the construction or reconstruction is planned to commence (but it need not be sooner than November 16, 1995);

(ii) The Notification of Compliance Status report as required by § 63.655(f) for a new source, addition, or change;

(iii) Periodic Reports and other reports as required by § 63.655(g) and (h);

* * * * *

(vi) Reports and notifications required by § 63.428(b), (c), (g)(1), (h)(1) through (h)(3), and (k) of subpart R. * * *

* * * * *

(l) If an additional petroleum refining process unit is added to a plant site or if a miscellaneous process vent, storage vessel, gasoline loading rack, marine tank vessel loading operation, or heat exchange system that meets the criteria in paragraphs (c)(1) through (8) of this section is added to an existing petroleum refinery or if another deliberate operational process change creating an additional Group 1 emissions point(s) (as defined in § 63.641) is made to an existing petroleum refining process unit, and if the addition or process change is not subject to the new source requirements as determined according to paragraphs (i) or (j) of this section, the requirements in paragraphs (l)(1) through (3) of this section shall apply. Examples of process changes include, but are not limited to, changes in production capacity, or feed or raw material where the change requires construction or physical alteration of the existing equipment or catalyst type, or whenever there is replacement, removal, or addition of recovery equipment. For purposes of this paragraph and paragraph (m) of this section, process changes do not include: Process upsets, unintentional temporary process changes, and changes that are within the equipment configuration and operating conditions documented in the Notification of Compliance Status report required by § 63.655(f).

* * * * *

(2) * * *

(i) If a petroleum refining process unit is added to a plant site or an emission point(s) is added to any existing petroleum refining process unit, the added emission point(s) shall be in compliance upon initial startup of any added petroleum refining process unit or emission point(s) or by August 18, 1998, whichever is later.

(ii) If a deliberate operational process change to an existing petroleum refining process unit causes a Group 2 emission point to become a Group 1 emission point (as defined in § 63.641), the owner or operator shall be in compliance upon initial startup or by August 18, 1998, whichever is later, unless the owner or operator demonstrates to the Administrator that achieving compliance will take longer than making the change.* * *

(3) The owner or operator of a petroleum refining process unit or of a storage vessel, miscellaneous process vent, wastewater stream, gasoline loading rack, marine tank vessel loading operation, or heat exchange system meeting the criteria in paragraphs (c)(1) through (8) of this section that is added to a plant site and is subject to the requirements for existing sources shall comply with the reporting and recordkeeping requirements that are applicable to existing sources including, but not limited to, the reports listed in paragraphs (l)(3)(i) through (vii) of this section.* * *

(i) The Notification of Compliance Status report as required by § 63.655(f) for the emission points that were added or changed;

(ii) Periodic Reports and other reports as required by § 63.655(g) and (h);

* * * * *

(vi) Reports and notifications required by § 63.428(b), (c), (g)(1), (h)(1) through (h)(3), and (k) of subpart R. * * *

(vii) Reports and notifications required by §§ 63.565 and 63.567 of subpart Y. * * *

* * * * *

(p) Overlap of subpart CC with other regulations for equipment leaks.

(1) After the compliance dates specified in paragraph (h) of this section, equipment leaks that are also subject to the provisions of 40 CFR parts 60 and 61 standards promulgated before

September 4, 2007, are required to comply only with the provisions specified in this subpart.

(2) Equipment leaks that are also subject to the provisions of 40 CFR part 60, subpart GGGa, are required to comply only with the provisions specified in 40 CFR part 60, subpart GGGa.

* * * * *

■ 6. Section 63.641 is amended by:

■ a. Adding, in alphabetical order, definitions for ''Cooling tower,'' ''Cooling tower return line,'' ''Heat exchange system,'' and ''Heat exchanger exit line''; and

■ b. Revising the definition of ''Continuous record'' to read as follows:

§ 63.641 Definitions.

* * * * *

Continuous record means documentation, either in hard copy or computer readable form, of data values measured at least once every hour and recorded at the frequency specified in § 63.655(i).

* * * * *

Cooling tower means a heat removal device used to remove the heat absorbed in circulating cooling water systems by transferring the heat to the atmosphere using natural or mechanical draft.

Cooling tower return line means the main water trunk lines at the inlet to the cooling tower before exposure to the atmosphere.

* * * * *

Heat exchange system means a device or series of devices used to transfer heat from process fluids to water without intentional direct contact of the process fluid with the water (*i.e.,* non-contact heat exchanger) and to transport and/or cool the water in a closed-loop recirculation system (cooling tower system) or a once-through system (*e.g.,* river or pond water). For closed-loop recirculation systems, the *heat exchange system* consists of a cooling tower, all heat exchangers that are serviced by that cooling tower, and all water lines to and from the heat exchanger(s). For once-through systems, the *heat exchange system* consists of one or more heat exchangers servicing an individual process unit and all water lines to and from the heat exchanger(s). Intentional direct contact with process fluids results in the formation of a wastewater.

Heat exchanger exit line means the cooling water line from the exit of one or more heat exchangers (where cooling water leaves the heat exchangers) to either the entrance of the cooling tower return line or prior to exposure to the atmosphere, in, as an example, a once-through cooling system, whichever occurs first.

* * * * *

■ 7. Section 63.642 is amended by revising paragraphs (k)(1) and (l)(2) to read as follows:

§ 63.642 General standards.

* * * * *

(k) * * *

(1) The owner or operator using this compliance approach shall also comply with the requirements of § 63.655 as applicable.

* * * * *

(l) * * *

(2) Comply with the requirements of §§ 63.652, 63.653, and 63.655, as applicable.

* * * * *

■ 8. Section 63.644 is amended by:

■ a. Revising paragraph (b) introductory text;

■ b. Revising paragraph (c)(1);

■ c. Revising paragraph (d); and

■ d. Revising paragraph (e) to read as follows:

§ 63.644 Monitoring provisions for miscellaneous process vents.

* * * * *

(b) An owner or operator of a Group 1 miscellaneous process vent may request approval to monitor parameters other than those listed in paragraph (a) of this section. The request shall be submitted according to the procedures specified in § 63.655(h). Approval shall be requested if the owner or operator:

* * * * *

(c) * * *

(1) Install, calibrate, maintain, and operate a flow indicator that determines whether a vent stream flow is present at least once every hour. Records shall be generated as specified in § 63.655(h) and (i). The flow indicator shall be installed at the entrance to any bypass line that could divert the vent stream away from the control device to the atmosphere; or

* * * * *

(d) The owner or operator shall establish a range that ensures compliance with the emissions standard for each parameter monitored under paragraphs (a) and (b) of this section. In order to establish the range, the information required in § 63.655(f)(3) shall be submitted in the Notification of Compliance Status report.

(e) Each owner or operator of a control device subject to the monitoring provisions of this section shall operate the control device in a manner consistent with the minimum and/or maximum operating parameter value or procedure required to be monitored under paragraphs (a) and (b) of this section. Operation of the control device in a manner that constitutes a period of excess emissions, as defined in § 63.655(g)(6), or failure to perform procedures required by this section shall constitute a violation of the applicable emission standard of this subpart.

■ 9. Section 63.645 is amended by revising paragraph (h)(2) to read as follows:

§ 63.645 Test methods and procedures for miscellaneous process vents.

* * * * *

(h) * * *

(2) Where the recalculated TOC emission rate is greater than 33 kilograms per day for an existing source or greater than 6.8 kilograms per day for a new source, the owner or operator shall submit a report as specified in § 63.655(f), (g), or (h) and shall comply with the appropriate provisions in § 63.643 by the dates specified in § 63.640.

* * * * *

■ 10. Section 63.646 is amended by revising paragraph (b)(1) to read as follows:

§ 63.646 Storage vessel provisions.

* * * * *

(b) * * *

(1) An owner or operator may use good engineering judgment or test results to determine the stored liquid weight percent total organic HAP for purposes of group determination. Data, assumptions, and procedures used in the determination shall be documented.

* * * * *

■ 11. Section 63.650 is amended by revising paragraph (a) to read as follows.

§ 63.650 Gasoline loading rack provisions.

(a) Except as provided in paragraphs (b) through (c) of this section, each owner or operator of a Group 1 gasoline loading rack classified under Standard Industrial Classification code 2911 located within a contiguous area and under common control with a petroleum refinery shall comply with subpart R, §§ 63.421, 63.422(a) through (c) and (e), 63.425(a) through (c) and (i), 63.425(e) through (h), 63.427(a) and (b), and 63.428(b), (c), (g)(1), (h)(1) through (3), and (k).

* * * * *

■ 12. Section 63.651 is amended by revising paragraphs (a) and (c) to read as follows:

§ 63.651 Marine tank vessel loading operation provisions.

(a) Except as provided in paragraphs (b) through (d) of this section, each

owner or operator of a marine tank vessel loading operation located at a petroleum refinery shall comply with the requirements of §§ 63.560 through 63.568.

* * * * *

(c) The notification reports under § 63.567(b) are not required.

* * * * *

■ 13. Section 63.652 is amended by:
■ a. Revising paragraph (a);
■ b. Revising paragraph (e)(5);
■ c. Revising the first sentence of paragraph (f)(3) introductory text;
■ d. Revising the first sentence in paragraph (g)(5)(ii)(B)(*1*); and
■ e. Revising paragraph (l)(1) to read as follows:

§ 63.652 Emissions averaging provisions.

(a) This section applies to owners or operators of existing sources who seek to comply with the emission standard in § 63.642(g) by using emissions averaging according to § 63.642(l) rather than following the provisions of §§ 63.643 through 63.647, and §§ 63.650 and 63.651. Existing marine tank vessel loading operations located at the Valdez Marine Terminal source may not comply with the standard by using emissions averaging.

* * * * *

(e) * * *

(5) Record and report quarterly and annual credits and debits in the Periodic Reports as specified in § 63.655(g)(8). Every fourth Periodic Report shall include a certification of compliance with the emissions averaging provisions as required by § 63.655(g)(8)(iii).

(f) * * *

(3) For emission points for which continuous monitors are used, periods of excess emissions as defined in § 63.655(g)(6)(i). * * *

* * * * *

(g) * * *

(5) * * *

(ii) * * *

(B) * * *

(*1*) The percent reduction for a control device shall be measured according to the procedures and test methods specified in § 63.565(d) of subpart Y.

* * *

* * * * *

(l) * * *

(1) The owner or operator shall notify the Administrator of excess emissions in the Periodic Reports as required in § 63.655(g)(6).

* * * * *

■ 14. Section 63.653 is amended by:
■ a. Revising paragraph (a)(7);
■ b. Revising paragraph (b);
■ c. Revising paragraph (c); and
■ d. Revising paragraphs (d) introductory text, (d)(2)(vii) introductory text, and (d)(2)(viii)(G) to read as follows:

§ 63.653 Monitoring, recordkeeping, and implementation plan for emissions averaging.

* * * * *

(a) * * *

(7) If an emission point in an emissions average is controlled using a pollution prevention measure or a device or technique for which no monitoring parameters or inspection procedures are specified in §§ 63.643 through 63.647 and §§ 63.650 and 63.651, the owner or operator shall establish a site-specific monitoring parameter and shall submit the information specified in § 63.655(h)(4) in the Implementation Plan.

(b) Records of all information required to calculate emission debits and credits and records required by § 63.655 shall be retained for 5 years.

(c) Notifications of Compliance Status report, Periodic Reports, and other reports shall be submitted as required by § 63.655.

(d) Each owner or operator of an existing source who elects to comply with § 63.655(g) and (h) by using emissions averaging for any emission points shall submit an Implementation Plan.

* * * * *

(2) * * *

(vii) The information specified in § 63.655(h)(4) for:

* * * * *

(viii) * * *

(G) For each pollution prevention measure, treatment process, or control device used to reduce air emissions of organic HAP from wastewater and for which no monitoring parameters or inspection procedures are specified in § 63.647, the information specified in § 63.655(h)(4) shall be included in the Implementation Plan.

* * * * *

§§ 63.654 and 63.655 [Redesignated as §§ 63.655 and 63.656]

■ 15. Sections 63.654 and 63.655 are redesignated as §§ 63.655 and 63.656.

■ 16. Section 63.654 is added to read as follows:

§ 63.654 Heat exchange systems.

(a) Except as specified in paragraph (b) of this section, the owner or operator of a heat exchange system that meets the criteria in § 63.640(c)(8) must comply with the requirements of paragraphs (c) through (g) of this section.

(b) A heat exchange system is exempt from the requirements in paragraphs (c) through (g) of this section if it meets any one of the criteria in paragraphs (b)(1) through (2) of this section.

(1) All heat exchangers that are in organic HAP service within the heat exchange system that either:

(i) Operate with the minimum pressure on the cooling water side at least 35 kilopascals greater than the maximum pressure on the process side; or

(ii) Employ an intervening cooling fluid, containing less than 5 percent by weight of total HAP listed in Table 1 to this subpart, between the process and the cooling water. This intervening fluid must serve to isolate the cooling water from the process fluid and must not be sent through a cooling tower or discharged. For purposes of this section, discharge does not include emptying for maintenance purposes.

(2) The heat exchange system cools process fluids that contain less than 5 percent by weight of total HAP listed in Table 1 to this subpart (*i.e.,* the heat exchange system does not contain any heat exchangers that are in organic HAP service as defined in this subpart).

(c) The owner or operator must perform monthly monitoring to identify leaks of total strippable volatile organic compound (VOC) from each heat exchange system subject to the requirements of this subpart according to the procedures in paragraphs (c)(1) and (2) of this section.

(1) Collect and analyze a sample from each cooling tower return line prior to exposure to air for each heat exchange system in organic HAP service or from each heat exchanger exit line for each heat exchanger or group of heat exchangers in organic HAP service within that heat exchange system to determine the total strippable VOC concentration (as methane) from the air stripping testing system using ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources'' Revision Number One, dated January 2003, Sampling Procedures Manual, Appendix P: Cooling Tower Monitoring, prepared by Texas Commission on Environmental Quality, January 31, 2003 (incorporated by reference—see § 63.14). The owner or operator of a once-through heat exchange system may elect to also monitor monthly (in addition to monitoring each heat exchanger exit line) the fresh water feed line prior to any heat exchanger to determine the total strippable VOC concentration (as methane) prior to the heat exchange system using the Modified El Paso Method.

(2) For a heat exchange system at an existing source, a leak is a total strippable VOC concentration (as methane) in the stripping gas of 6.2 ppmv or greater. For a heat exchange system at a new source, a leak is a total strippable VOC concentration (as methane) in the stripping gas of 3.1 ppmv or greater.

(d) If a leak is detected, the owner or operator must repair the leak to reduce the measured concentration to below the applicable action level as soon as practicable, but no later than 45 days after identifying the leak, except as specified in paragraphs (e) and (f) of this section. Actions that can be taken to achieve repair include but are not limited to:

(1) Physical modifications to the leaking heat exchanger, such as welding the leak or replacing a tube;

(2) Blocking the leaking tube within the heat exchanger;

(3) Changing the pressure so that water flows into the process fluid;

(4) Replacing the heat exchanger or heat exchanger bundle; or

(5) Isolating, bypassing, or otherwise removing the leaking heat exchanger from service until it is otherwise repaired.

(e) If the owner or operator detects a leak when monitoring a cooling tower return line under paragraph (c)(1) of this section, the owner or operator may conduct additional monitoring to identify leaks of total strippable VOC emissions using Modified El Paso Method from each heat exchanger or group of heat exchangers in organic HAP service associated with the heat exchange system for which the leak was detected. If the additional monitoring shows that the total strippable VOC concentration in the stripped air at the heat exchanger exit line for each heat exchanger in organic HAP service is less than 6.2 ppmv for existing sources or less than 3.1 ppmv for new sources, the heat exchange system is excluded from repair requirements in paragraph (d) of this section.

(f) The owner or operator may delay the repair of a leaking heat exchanger when one of the conditions in paragraphs (f)(1) through (3) of this section is met. The owner or operator must determine if a delay of repair is necessary as soon as practicable, but no later than 45 days after first identifying the leak.

(1) If the repair is technically infeasible without a shutdown and the total strippable VOC concentration (as methane) is initially and remains less than 62 ppmv for all monthly monitoring periods during the delay of repair, the owner or operator may delay repair until the next scheduled shutdown of the heat exchange system. If, during subsequent monthly monitoring, the total strippable VOC concentration (as methane) is 62 ppmv or greater, the owner or operator must repair the leak within 30 days of the monitoring event in which the leak was equal to or exceeded 62 ppmv total strippable VOC (as methane), except as provided in paragraph (f)(3) of this section.

(2) If the necessary equipment, parts, or personnel are not available and the total strippable VOC concentration (as methane) is initially and remains less than 62 ppmv for all monthly monitoring periods during the delay of repair, the owner or operator may delay the repair for a maximum of 120 calendar days. The owner or operator must demonstrate that the necessary equipment, parts, or personnel were not available. If, during subsequent monthly monitoring, the total strippable VOC concentration (as methane) is 62 ppmv or greater, the owner or operator must repair the leak within 30 days of the monitoring event in which the leak was equal to or exceeded 62 ppmv total strippable VOC (as methane).

(g) To delay the repair under paragraph (f) of this section, the owner or operator must record the information in paragraphs (g)(1) through (g)(4) of this section.

(1) The reason(s) for delaying repair.

(2) A schedule for completing the repair as soon as practical.

(3) The date and concentration of the leak as first identified and the results of all subsequent monthly monitoring events during the delay of repair.

(4) An estimate of the potential emissions from the leaking heat exchange system or heat exchanger following the procedures in paragraphs (g)(4)(i) and (g)(4)(ii) of this section.

(i) Determine the total strippable VOC concentration in the cooling water, in parts per million by weight (ppmw), using equation 7–1 from ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources'' Revision Number One, dated January 2003, Sampling Procedures Manual, Appendix P: Cooling Tower Monitoring, prepared by Texas Commission on Environmental Quality, January 31, 2003 (incorporated by reference—see § 63.14), based on the total strippable concentration in the stripped air, ppmv, from monitoring.

(ii) Calculate the VOC emissions for the leaking heat exchange system or heat exchanger by multiplying the VOC concentration in the cooling water, ppmw, by the flow rate of the cooling water from the leaking tower or heat exchanger and by the expected duration of the delay.

■ 17. Newly redesignated § 63.655 is amended by:

■ a. Revising the first sentence of paragraph (b);

■ b. Revising the first sentence of paragraph (c);

■ c. Revising paragraph (f)(1) introductory text;

■ d. Adding paragraph (f)(1)(vi);

■ e. Revising paragraphs (g) introductory text and (g)(8)(ii)(C);

■ g. Adding paragraph (g)(9);

■ h. Redesignating existing paragraph (i)(4) as (i)(5); and

■ i. Adding paragraph (i)(4) to read as follows.

§ 63.655 Reporting and recordkeeping requirements.

* * * * *

(b) Each owner or operator subject to the gasoline loading rack provisions in § 63.650 shall comply with the recordkeeping and reporting provisions in § 63.428 (b) and (c), (g)(1), (h)(1) through (h)(3), and (k) of subpart R.* * *

(c) Each owner or operator subject to the marine tank vessel loading operation standards in § 63.651 shall comply with the recordkeeping and reporting provisions in § 63.567(a) and § 63.567(c) through (k) of subpart Y.* * *

* * * * *

(f) * * *

(1) The Notification of Compliance Status report shall include the information specified in paragraphs (f)(1)(i) through (f)(1)(vi) of this section.

* * * * *

(vi) For each heat exchange system, identification of the heat exchange systems that are subject to the requirements of this subpart.

* * * * *

(g) The owner or operator of a source subject to this subpart shall submit Periodic Reports no later than 60 days after the end of each 6-month period when any of the compliance exceptions specified in paragraphs (g)(1) through (6) of this section or paragraph (g)(9) of this section occur. The first 6-month period shall begin on the date the Notification of Compliance Status report is required to be submitted. A Periodic Report is not required if none of the compliance exceptions identified in paragraph (g)(1) through (6) of this section or paragraph (g)(9) of this section occurred during the 6-month period unless emissions averaging is utilized. Quarterly reports must be submitted for emission points included in emission averages, as provided in

paragraph (g)(8) of this section. An owner or operator may submit reports required by other regulations in place of or as part of the Periodic Report required by this paragraph if the reports contain the information required by paragraphs (g)(1) through (9) of this section.

* * * * *

(8) * * *

(ii) * * *

(C) The information required to be reported by § 63.567(e)(4) and (j)(3) of subpart Y for each marine tank vessel loading operation included in an emissions average, unless the information has already been submitted in a separate report;

* * * * *

(9) For heat exchange systems, Periodic Reports must include the following information:

(i) The number of heat exchange systems in HAP service.

(ii) The number of heat exchange systems in HAP service found to be leaking.

(iii) A summary of the monitoring data that indicate a leak, including the number of leaks determined to be equal to or greater than the leak definitions specified in § 63.654(c)(2);

(iv) If applicable, the date a leak was identified, the date the source of the leak was identified, and the date of repair;

(v) If applicable, a summary of each delayed repair, including the original date and reason for the delay and the date of repair, if repaired during the reporting period; and

(vi) If applicable, an estimate of VOC emissions for each delayed repair over the reporting period.

* * * * *

(i) * * *

(4) The owner or operator of a heat exchange system subject to the monitoring requirements in § 63.654 shall comply with the recordkeeping requirements in paragraphs (i)(4)(i) through (vi) of this section.

(i) Identification of all heat exchangers at the facility and the average annual HAP concentration of process fluid or intervening cooling fluid estimated when developing the Notification of Compliance Status report.

(ii) Identification of all heat exchange systems that are in organic HAP service. For each heat exchange system that is subject to this subpart, this must include identification of all heat exchangers within each heat exchange system, identification of the individual heat exchangers in organic HAP service within each heat exchange system, and, for closed-loop recirculation systems, the cooling tower included in each heat exchange system.

(iii) Results of the following monitoring data for each monthly monitoring event:

(A) Date/time of event.

(B) Barometric pressure.

(C) El Paso air stripping apparatus water flow (ml/min) and air flow, ml/min, and air temperature, °C.

(D) FID reading (ppmv).

(E) Heat exchange exit line flow or cooling tower return line flow at the El Paso monitoring location, gal/min.

(F) Calibration information identified in Section 5.4.2 of the Modified El Paso Method, incorporated by reference in § 63.14(n).

(iv) The date when a leak was identified and the date when the heat exchanger was repaired or taken out of service.

(vi) If a repair is delayed, the reason for the delay, the schedule for completing the repair, and the estimate of potential emissions for the delay of repair.

* * * * *

■ 18. Newly redesignated § 63.656 is amended by revising the first sentence of paragraph (c)(1) to read as follows:

§ 63.656 Implementation and enforcement.

* * * * *

(c) * * *

(1) Approval of alternatives to the requirements in §§ 63.640, 63.642(g) through (l), 63.643, 63.646 through 63.652, and 63.654. * * *

* * * * *

■ 19. Tables 1, 4, 5, 6, and 7 of the appendix to subpart CC are revised and footnotes d, f, and g to table 10 are revised to read as follows:

Appendix to Subpart CC of Part 63—Tables

TABLE 1—HAZARDOUS AIR POLLUTANTS

Chemical name	CAS No.[a]
Benzene	71432
Biphenyl	92524
Butadiene (1,3)	106990
Carbon disulfide	75150
Carbonyl sulfide	463581
Cresol (mixed isomers[b])	1319773
Cresol (m-)	108394
Cresol (o-)	95487
Cresol (p-)	106445
Cumene	98828
Dibromoethane (1,2) (ethylene dibromide)	106934
Dichloroethane (1,2)	107062
Diethanolamine	111422
Ethylbenzene	100414
Ethylene glycol	107211
Hexane	110543
Methanol	67561
Methyl isobutyl ketone (hexone)	108101
Methyl tert butyl ether	1634044
Naphthalene	91203
Phenol	108952
Toluene	108883
Trimethylpentane (2,2,4)	540841
Xylene (mixed isomers[b])	1330207
xylene (m-)	108383
xylene (o-)	95476
xylene (p-)	106423

[a] CAS number = Chemical Abstract Service registry number assigned to specific compounds, isomers, or mixtures of compounds.

[b] Isomer means all structural arrangements for the same number of atoms of each element and does not mean salts, esters, or derivatives.

* * * * *

TABLE 4—GASOLINE DISTRIBUTION EMISSION POINT RECORDKEEPING AND REPORTING REQUIREMENTS[a]

Reference (section of subpart Y)	Description	Comment
63.428(b) or (k)	Records of test results for each gasoline cargo tank loaded at the facility.	
63.428(c)	Continuous monitoring data recordkeeping requirements.	
63.428(g)(1)	Semiannual report loading rack information	Required to be submitted with the Periodic Report required under 40 CFR part 63, subpart CC.
63.428(h)(1) through (h)(3)	Excess emissions report loading rack information	Required to be submitted with the Periodic Report required under 40 CFR part 63, subpart CC.

[a] This table does not include all the requirements delineated under the referenced sections. See referenced sections for specific requirements.

TABLE 5—MARINE VESSEL LOADING OPERATIONS RECORDKEEPING AND REPORTING REQUIREMENTS [a]

Reference (section of subpart Y)	Description	Comment
63.562(e)(2)	Operation and maintenance plan for control equipment and monitoring equipment.	
63.565(a)	Performance test/site test plan	The information required under this paragraph is to be submitted with the Notification of Compliance Status report required under 40 CFR part 63, subpart CC.
63.565(b)	Performance test data requirements.	
63.567(a)	General Provisions (subpart A) applicability.	
63.567(c)	Request for extension of compliance.	
63.567(d)	Flare recordkeeping requirements.	
63.567(e)	Summary report and excess emissions and monitoring system performance report requirements.	The information required under this paragraph is to be submitted with the Periodic Report required under 40 CFR part 63, subpart CC.
63.567(f)	Vapor collection system engineering report.	
63.567(g)	Vent system valve bypass recordkeeping requirements.	
63.567(h)	Marine vessel vapor-tightness documentation.	
63.567(i)	Documentation file maintenance.	
63.567(j)	Emission estimation reporting and recordkeeping procedures.	

[a] This table does not include all the requirements delineated under the referenced sections. See referenced sections for specific requirements.

TABLE 6—GENERAL PROVISIONS APPLICABILITY TO SUBPART CC [a]

Reference	Applies to subpart CC	Comment
63.1(a)(1)	Yes.	
63.1(a)(2)	Yes.	
63.1(a)(3)	Yes.	
63.1(a)(4)	Yes.	
63.1(a)(5)	No	Reserved.
63.1(a)(6)	Yes	Except the correct mail drop (MD) number is C404–04.
63.1(a)(7)–63.1(a)(9)	No	Reserved.
63.1(a)(10)	Yes.	
63.1(a)(11)	Yes.	
63.1(a)(12)	Yes.	
63.1(b)(1)	Yes.	
63.1(b)(2)	No	Reserved.
63.1(b)(3)	No.	
63.1(c)(1)	Yes.	
63.1(c)(2)	No	Area sources are not subject to subpart CC.
63.1(c)(3)–63.1(c)(4)	No	Reserved.
63.1(c)(5)	Yes	Except that sources are not required to submit notifications overridden by this table.
63.1(d)	No	Reserved.
63.1(e)	No	No CAA section 112(j) standard applies to the affected sources under subpart CC.
63.2	Yes	§ 63.641 of subpart CC specifies that if the same term is defined in subparts A and CC, it shall have the meaning given in subpart CC.
63.3	Yes.	
63.4(a)(1)–63.4(a)(2)	Yes.	
63.4(a)(3)–63.4(a)(5)	No	Reserved.
63.4(b)	Yes.	
63.4(c)	Yes.	
63.5(a)	Yes.	
63.5(b)(1)	Yes.	
63.5(b)(2)	No	Reserved.
63.5(b)(3)	Yes.	
63.5(b)(4)	Yes	Except the cross-reference to § 63.9(b) is changed to § 63.9(b)(4) and (5). Subpart CC overrides § 63.9 (b)(2).
63.5(b)(5)	No	Reserved.
63.5(b)(6)	Yes.	
63.5(c)	No	Reserved.
63.5(d)(1)(i)	Yes	Except that the application shall be submitted as soon as practicable before startup, but no later than 90 days after the promulgation date of subpart CC if the construction or reconstruction had commenced and initial startup had not occurred before the promulgation of subpart CC.
63.5(d)(1)(ii)	Yes	Except that for affected sources subject to subpart CC, emission estimates specified in § 63.5(d)(1)(ii)(H) are not required.
63.5(d)(1)(iii)	No	Subpart CC § 63.655(f) specifies Notification of Compliance Status report requirements.
63.5(d)(2)	Yes.	
63.5(d)(3)	Yes.	

TABLE 6—GENERAL PROVISIONS APPLICABILITY TO SUBPART CC [a]—Continued

Reference	Applies to subpart CC	Comment
63.5(d)(4)	Yes.	
63.5(e)	Yes.	
63.5(f)	Yes.	
63.6(a)	Yes.	
63.6(b)(1)–63.6(b)(5)	No	Subpart CC specifies compliance dates and notifications for sources subject to subpart CC.
63.6(b)(6)	No	Reserved.
63.6(b)(7)	Yes.	
63.6(c)(1)–63.6(c)(2)	No	§ 63.640 of subpart CC specifies the compliance date.
63.6(c)(3)–63.6(c)(4)	No	Reserved.
63.6(c)(5)	Yes	
63.6(d)	No	Reserved.
63.6(e)(1)	Yes	Except the startup, shutdown, or malfunction plan does not apply to Group 2 emission points that are not part of an emissions averaging group.[b]
63.6(e)(2)	No	Reserved.
63.6(e)(3)(i)	Yes	Except the startup, shutdown, or malfunction plan does not apply to Group 2 emission points that are not part of an emissions averaging group.[b]
63.6(e)(3)(ii)	No	Reserved.
63.6(e)(3)(iii)–63.6(e)(3)(ix)	Yes	Except the reports specified in § 63.6(e)(3)(iv) do not need to be reported within 2 and 7 days of commencing and completing the action, respectively, but must be included in the next periodic report.
63.6 (f)(1)	Yes	Except for the heat exchange system standards, which apply at all times.
63.6(f)(2) and (3)	Yes	Except the phrase ''as specified in § 63.7(c)'' in § 63.6(f)(2)(iii)(D) does not apply because subpart CC does not require a site-specific test plan.
63.6(g)	Yes.	
63.6(h)(1) and 63.6(h)(2)	Yes	Except § 63.6(h)(2)(ii), which is reserved.
63.6(h)(3)	No	Reserved.
63.6(h)(4)	No	Notification of visible emission test not required in subpart CC.
63.6(h)(5)	No	Visible emission requirements and timing is specified in § 63.645(i) of subpart CC.
63.6(h)(6)	Yes.	
63.6(h)(7)	No	Subpart CC does not require opacity standards.
63.6(h)(8)	Yes.	
63.6(h)(9)	No	Subpart CC does not require opacity standards.
63.6(i)	Yes	Except for § 63.6(i)(15), which is reserved.
63.6(j)	Yes.	
63.7(a)(1)	Yes.	
63.7(a)(2)	Yes	Except test results must be submitted in the Notification of Compliance Status report due 150 days after compliance date, as specified in § 63.655(f) of subpart CC.
63.7(a)(3)	Yes.	
63.7(a)(4)	Yes.	
63.7(b)	No	Subpart CC requires notification of performance test at least 30 days (rather than 60 days) prior to the performance test.
63.7(c)	No	Subpart CC does not require a site-specific test plan.
63.7(d)	Yes.	
63.7(e)(1)	Yes	Except the performance test must be conducted at the maximum representative capacity as specified in § 63.642(d)(3) of subpart CC.
63.7(e)(2)–63.7(e)(4)	Yes.	
63.7(f)	No	Subpart CC specifies applicable methods and provides alternatives without additional notification or approval.
63.7(g)	No	Performance test reporting specified in § 63.655(f).
63.7(h)(1)	Yes.	
63.7(h)(2)	Yes.	
63.7(h)(3)	Yes	Yes, except site-specific test plans shall not be required, and where § 63.7(g)(3) specifies submittal by the date the site-specific test plan is due, the date shall be 90 days prior to the Notification of Compliance Status report in § 63.655(f).
63.7(h)(4)(i)	Yes.	
63.7(h)(4)(ii)	No	Site-specific test plans are not required in subpart CC.
63.7(h)(4)(iii) and (iv)	Yes.	
63.7(h)(5)	Yes.	
63.8(a)	Yes	Except § 63.8(a)(3), which is reserved.
63.8(b)	Yes.	
63.8(c)(1)	Yes.	
63.8(c)(2)	Yes.	
63.8(c)(3)	Yes	Except that verification of operational status shall, at a minimum, include completion of the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system or other written procedures that provide adequate assurance that the equipment would monitor accurately.
63.8(c)(4)	Yes	Except Subpart CC specifies the monitoring cycle frequency specified in § 63.8(c)(4)(ii) is ''once every hour rather'' than ''for each successive 15-minute period.''
63.8(c)(5)–63.8(c)(8)	No.	

TABLE 6—GENERAL PROVISIONS APPLICABILITY TO SUBPART CC [a]—Continued

Reference	Applies to subpart CC	Comment
63.8(d)	No.	
63.8(e)	No	Subpart CC does not require performance evaluations; however, this shall not abrogate the Administrator's authority to require performance evaluation under section 114 of the Clean Air Act.
63.8(f)(1)	Yes.	
63.8(f)(2)	Yes.	
63.8(f)(3)	Yes.	
63.8(f)(4)(i)	No	Timeframe for submitting request is specified in § 63.655(h)(5)(i) of subpart CC.
63.8(f)(4)(ii)	Yes.	
63.8(f)(4)(iii)	No	Timeframe for submitting request is specified in § 63.655(h)(5)(i) of subpart CC.
63.8(f)(5)	Yes.	
63.8(f)(6)	No	Subpart CC does not require continuous emission monitors.
63.8(g)	No	Subpart CC specifies data reduction procedures in § 63.655(i)(3).
63.9(a)	Yes	Except that the owner or operator does not need to send a copy of each notification submitted to the Regional Office of the EPA as stated in § 63.9(a)(4)(ii).
63.9(b)(1)	Yes	Except the notification of compliance status report specified in § 63.655(f) of subpart CC may also serve as the initial compliance notification required in § 63.9(b)(1)(iii).
63.9(b)(2)	No	A separate Initial Notification report is not required under subpart CC.
63.9(b)(3)	No	Reserved.
63.9(b)(4)	Yes	Except for subparagraphs § 63.9(b)(4)(ii) through (iv), which are reserved.
63.9(b)(5)	Yes.	
63.9(c)	Yes.	
63.9(d)	Yes.	
63.9(e)	No	Subpart CC requires notification of performance test at least 30 days (rather than 60 days) prior to the performance test and does not require a site-specific test plan.
63.9(f)	No	Subpart CC does not require advanced notification of visible emissions test.
63.9(g)	No.	
63.9(h)	No	Subpart CC § 63.655(f) specifies Notification of Compliance Status report requirements.
63.9(i)	Yes.	
63.9(j)	No.	
63.10(a)	Yes.	
63.10(b)(1)	No	§ 63.644(d) of subpart CC specifies record retention requirements.
63.10(b)(2)(i)	Yes.	
63.10(b)(2)(ii)	Yes.	
63.10(b)(2)(iii)	No.	
63.10(b)(2)(iv)	Yes.	
63.10(b)(2)(v)	Yes.	
63.10(b)(2)(vi)	Yes.	
63.10(b)(2)(vii)	No.	
63.10(b)(2)(viii)	Yes.	
63.10(b)(2)(ix)	Yes.	
63.10(b)(2)(x)	Yes.	
63.10(b)(2)(xi)	No.	
63.10(b)(2)(xii)	Yes.	
63.10(b)(2)(xiii)	No.	
63.10(b)(2)(xiv)	Yes.	
63.10(b)(3)	No.	
63.10(c)(1)–63.10(c)(6)	No.	
63.10(c)(7) and 63.10(c)(8)	Yes.	
63.10(c)(9)–63.10(c)(15)	No.	
63.10(d)(1)	Yes.	
63.10(d)(2)	No	§ 63.655(f) of subpart CC specifies performance test reporting.
63.10(d)(3)	No	Results of visible emissions test are included in Compliance Status Report as specified in § 63.655(f).
63.10(d)(4)	Yes.	
63.10(d)(5)(i)	Yes[b]	Except that reports required by § 63.10(d)(5)(i) may be submitted at the same time as periodic reports specified in § 63.655(g) of subpart CC.
63.10(d)(5)(ii)	Yes	Except that actions taken during a startup, shutdown, or malfunction that are not consistent with the startup, shutdown, and malfunction plan and that cause the source to exceed any applicable emission limitation do not need to be reported within 2 and 7 days of commencing and completing the action, respectively, but must be included in the next periodic report.
63.10(e)	No.	
63.10(f)	Yes.	
63.11–63.16	Yes.	

[a] Wherever subpart A specifies "postmark" dates, submittals may be sent by methods other than the U.S. Mail (*e.g.,* by fax or courier). Submittals shall be sent by the specified dates, but a postmark is not required.

[b] The plan, and any records or reports of startup, shutdown, and malfunction do not apply to Group 2 emission points that are not part of an emissions averaging group.

TABLE 7—FRACTION MEASURED (F_M), FRACTION EMITTED (F_E), AND FRACTION REMOVED (FR) FOR HAP COMPOUNDS IN WASTEWATER STREAMS

Chemical name	CAS No.[a]	F_m	F_e	Fr
Benzene	71432	1.00	0.80	0.99
Biphenyl	92524	0.86	0.45	0.99
Butadiene (1,3)	106990	1.00	0.98	0.99
Carbon disulfide	75150	1.00	0.92	0.99
Cumene	98828	1.00	0.88	0.99
Dichloroethane (1,2-) (Ethylene dichloride)	107062	1.00	0.64	0.99
Ethylbenzene	100414	1.00	0.83	0.99
Hexane	110543	1.00	1.00	0.99
Methanol	67561	0.85	0.17	0.31
Methyl isobutyl ketone (hexone)	108101	0.98	0.53	0.99
Methyl tert butyl ether	1634044	1.00	0.57	0.99
Naphthalene	91203	0.99	0.51	0.99
Trimethylpentane (2,2,4)	540841	1.00	1.00	0.99
xylene (m-)	108383	1.00	0.82	0.99
xylene (o-)	95476	1.00	0.79	0.99
xylene (p-)	106423	1.00	0.82	0.99

[a] CAS numbers refer to the Chemical Abstracts Service registry number assigned to specific compounds, isomers, or mixtures of compounds.

* * * * *

Table 10—Miscellaneous Process Vents—Monitoring, Recordkeeping, and Reporting Requirements for Complying With 98 Weight-Percent Reduction of Total Organic HAP Emissions or a Limit of 20 Parts per Million by Volume

* * * * *

[d] NCS = Notification of Compliance Status Report described in § 63.655.

* * * * *

[f] When a period of excess emission is caused by insufficient monitoring data, as described in § 63.655(g)(6)(i)(C) or (D), the duration of the period when monitoring data were not collected shall be included in the Periodic Report.

[g] PR = Periodic Reports described in § 63.655(g).

* * * * *

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Part IV

Small Business Administration

13 CFR Parts 121 and 124
Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations; Proposed Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 124

RIN 3245–AF53

Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: This rule proposes to make changes to the regulations governing the 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and to the U.S. Small Business Administration's (SBA or Agency) size regulations. Some of the changes involve technical issues such as changing the term ''SIC code'' to ''NAICS code'' to reflect the national conversion to the North American Industry Classification System. Other changes are more substantive and result from SBA's experience in implementing the current regulations. For example, SBA has learned through experience that certain of its rules governing the 8(a) BD program are too restrictive and serve to unfairly preclude firms from being admitted to the program. In other cases, SBA has determined that a rule is too expansive or indefinite and has sought to restrict or clarify that rule. In one case wording changes are being proposed to correct past public or agency misinterpretation. Also, new situations have arisen that were not anticipated when the current rules were drafted and the proposed rule seeks to cover those situations. Finally, one of the changes, involving Native Hawaiian Organizations (NHO's), implements a statutory change.

DATES: Comments must be received on or before December 28, 2009.

ADDRESSES: You may submit comments, identified by RIN: 3245–AF53, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail, for paper, disk, or CD/ROM submissions:* Joseph Loddo, Associate Administrator, Office of Business Development, 409 Third Street, SW., Mail Code, Washington, DC 20416.
- *Hand Delivery/Courier:* Joseph Loddo, Associate Administrator, Office of Business Development, 409 Third Street, SW., Washington, DC 20416.

SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.Regulations.gov,* please submit the information to LeAnn Delaney, Deputy Associate Administrator, Office of Business Development, 409 Third Street, SW., Washington, DC 20416, or send an e-mail to *leann.delaney@sba.gov*. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination of whether it will publish the information or not.

FOR FURTHER INFORMATION CONTACT: LeAnn Delaney, Deputy Associate Administrator, Office of Business Development, at (202) 205–5852, or *leann.delaney@sba.gov*.

SUPPLEMENTARY INFORMATION:

This rule proposes to make a number of changes to the regulations governing the 8(a) BD and SDB programs, and several changes to SBA's size regulations. Some of the changes involve technical issues. Other changes are more substantive and result from SBA's experience in implementing the current regulations.

The following specific changes are being proposed to SBA's regulations. There are six proposed changes to SBA's size regulations, two dealing with mentor/protégé situations, one amending requirements for joint ventures, one clarifying how a procurement should be classified, one further explaining the nonmanufacturer rule, and one relating to who may request a formal size determination. The remaining proposed changes are to the regulations governing SBA's 8(a) BD and SDB programs. It is noted that all regulations governing the 8(a) program apply to the SDB program, unless otherwise specified. While the SDB program no longer has an application and certification component, the provisions specifying what constitutes an SDB are still needed for self-certification and protest purposes.

Exception to Affiliation for Mentor/Protégé Programs

The first proposed change would clarify when SBA would consider a protégé firm not to be affiliated with its mentor based on assistance received from the mentor through a mentor/protégé agreement. The current regulation may be misconstrued to allow other Federal agencies to establish mentor/protégé programs and exempt protégés from SBA's size affiliation rules. That was never SBA's intent. The exception to affiliation contained in § 121.103(b)(6) was meant to apply to SBA's 8(a) BD mentor/protégé program and other Federal mentor/protégé programs that specifically authorize an exception to affiliation in their authorizing statute. Because of the business development purposes of the 8(a) BD program, SBA administratively established an exception to affiliation for protégé firms. Specifically, protégé firms are not affiliated with their mentors based on assistance received from their mentors through an SBA-approved 8(a) BD mentor/protégé agreement. That exception exists in the current rule and remains in this proposed rule. The proposed rule merely spells out more explicitly the affiliation exception for clarity purposes.

In addition, the proposed rule makes clear that an exception to affiliation for protégés in other Federal mentor/protégé programs will be recognized by SBA only where specifically authorized by statute (*e.g.,* the Department of Defense mentor/protégé program) or where SBA has authorized an exception to affiliation for a mentor/protégé program of another Federal agency under the procedures set forth in § 121.903. By statute, SBA is the sole agency responsible for determining size for purposes of any Federal assistance. SBA does not believe that another agency should be able to exempt firms from SBA's affiliation rules (and in effect make program-specific size rules) by itself. There is a formal process spelled out in § 121.903 that an agency must use if it would like to deviate from SBA's size rules, including those relating to affiliation. This process must be followed and SBA must specifically authorize an exception to affiliation for another Federal mentor/protégé program in order for SBA to recognize the exception. SBA does not anticipate approving exceptions to affiliation to agencies seeking to have such an exception for their mentor/protégé programs except in limited circumstances. SBA believes that the 8(a) BD program is a unique business development program that is unlike other Federal programs. If a program of another agency is also intended to assist business development and an exclusion from affiliation for joint ventures conducted under that agency's mentor/protégé program would promote such business development, SBA would be inclined to grant an exclusion from affiliation because it would serve the same purpose as the exclusion from affiliation for 8(a) mentor/protégé relationships.

Joint Ventures

The second proposed change to the size rules pertains to joint ventures.

Under current § 121.103(h), a joint venture is an entity with limited duration. Specifically, the current regulation limits a specific joint venture to submitting no more than three offers over a two year period. Two firms (including an 8(a) protégé firm and its mentor) are limited to pursuing three contract opportunities under one joint venture, but there is nothing in the regulations prohibiting the same two firms from forming a second joint venture and pursuing three additional contract opportunities. The rule limiting the number of contract opportunities any single joint venture can pursue was actually intended to loosen the requirements of the prior regulations. SBA's previous regulations defined a joint venture to be an entity that was ''formed * * * to engage in and carry out a single, specific business venture for joint profit * * *'' The genesis for the change initially came from 8(a) firms, which complained that it was hard and costly for them to go out and form a new joint venture entity (usually in the form of a limited liability company (LLC)) for every contract opportunity that they sought. SBA agreed, and decided to provide more flexibility. SBA did so by changing the size regulations, the place in SBA's regulations where the term joint venture was defined. Because the provision appears in part 121 of SBA's regulations, it applies to all of SBA's programs, including the 8(a) BD program (as intended).

This provision, however, has caused confusion. Some firms misunderstood that the limitation contained in the regulation was on the number of offers submitted by the joint venture instead of the number of contracts awarded to the joint venture. As such, some joint ventures continued to submit offers beyond the three permitted by the regulation and were determined not to be eligible for award where the joint venture was otherwise the apparent successful offeror, but the offer was a fourth (or more) offer. Firms have recommended to SBA that if there is such a limit, it should be on contracts, not offers. Upon further reflection, SBA agrees and proposes to change the limit of three offers to a limit of three contract awards under one joint venture agreement.

The proposed rule would clarify that three contract awards is not an absolute limit for a specific joint venture agreement. A joint venture could choose to pursue and be awarded a fourth (or more) contract award, but in doing so would cause the partners to the joint venture to be deemed affiliated for all purposes. Again, the two (or more) firms could form a second joint venture and be awarded three additional contracts, and a third joint venture to be awarded three more. At some point, however, such a longstanding relationship or contractual dependence would lead to a finding of general affiliation, even in the 8(a) mentor/protégé joint venture context. As an alternative, SBA also considered revising this provision to limit the number of contract awards that the same partners to one or more joint ventures could receive without the partners being deemed affiliates for all purposes. SBA thought that three awards might be too restrictive and considered limiting the number of contracts that the same joint venture partners could be awarded to five. Under this approach, the identical partners could form one joint venture and receive five contracts or form several joint ventures and receive five contracts in total before SBA would find the partners to be affiliated for all purposes. SBA specifically requests comments on this approach, specifically addressing whether this approach is preferable to the one proposed.

In drafting the current three offers over two years requirement, SBA did not intend to limit the number of contracting opportunities that two (or more) firms could seek or contracts that they could be awarded through a joint venture relationship. As noted above, SBA believes that a ''joint venture'' is an entity of limited duration. If SBA did not limit the number of contracting opportunities, or under this proposed rule the number of contract awards, that a specific joint venture could receive, then the joint venture could be an ongoing entity with unlimited duration. In determining the size of a joint venture, the receipts or employees of the joint venture partners are generally aggregated (unless an exclusion from affiliation applies). If the aggregated receipts or employees are less than the size standard assigned to the relevant procurement, the joint venture qualifies as a small business. If one of the joint venture partners seeks a different contract opportunity apart from the joint venture, its size is generally considered individually (unless there are other bases for finding affiliation). If a specific ''joint venture'' could seek unlimited contracting opportunities and be awarded unlimited contracts, then the parties to the joint venture would necessarily be deemed affiliates for all purposes because of their interdependent contractual relations. This is the case because in effect the ''joint venture'' would be a new ongoing business entity that is owned by two individual firms. Because of this affiliation, the revenues or employees would be aggregated even where one of the firms sought a contract opportunity individually.

The proposed rule also clarifies the time at which SBA will determine whether this three in two years requirement has been met. SBA understands that any offeror, including a joint venture offeror, may seek more than one contract opportunity at the same time. Under SBA's regulations, size is determined as of the date a concern submits a written self-certification that it is small as part of its initial offer including price. *See* 13 CFR 121.404(a). As long as a concern is small as of that date, it may be awarded a contract as a small business even if it has grown to be other than small as of the date of award. In other words, even if a concern has received additional revenues which would render it other than small after it certifies itself to be small as part of its initial offer including price, it may be awarded a contract as a small business. Having one specific point in time to determine size gives certainty to the procurement process for both the concern and the procuring agency. SBA believes that compliance with the three awards in two years rule should be treated similarly. As such, SBA proposes to determine compliance with the three in two years rule as of the date of initial offer including price. An individual joint venture may have submitted offers to perform two, three or more procurements before it finds out that it has won any specific competition. If at the time of offer the joint venture had not yet received three contract awards, then the joint venture would be able to submit offers for several procurement opportunities and ultimately be awarded any contract for which it submitted an offer before receiving a third contract. For example, Joint Venture AB has received two contracts. On April 2, Joint Venture AB submits an offer for Solicitation 1. On June 6, Joint Venture AB submits an offer for Solicitation 2. On July 13, Joint Venture AB submits an offer for Solicitation 3. In September, Joint Venture AB is found to be the apparent successful offeror for all three solicitations. Even though the award of the three contracts would give Joint Venture AB a total of five contract awards, it could receive those awards without causing general affiliation between its joint venture partners because Joint Venture AB had not yet received three contract awards as of the dates of the offers for each of three solicitations at issue.

The proposed rule also clarifies that while a joint venture may or may not be a separate legal entity (*e.g.,* an LLC), it must exist through a written document. Thus, even an ''informal'' joint venture must have a written agreement between the partners. In addition, the rule clarifies SBA's current policy that a joint venture may or may not be populated (*i.e.,* have its own separate employees). Whether a joint venture needs to be populated or have separate employees depends upon the legal structure of the joint venture. If a joint venture is a separate legal entity, then it must have its own employees. If a joint venture merely exists through a written agreement between two or more individual business entities, then it need not have its own separate employees and employees of each of the individual business entities may perform work for the joint venture.

There has also been confusion as to whether this three in two year rule applies to the 8(a) BD program. Some individuals mistakenly believed that it did not apply to joint ventures between mentors and protégé firms in the 8(a) BD program. This is not the case. Because the rule appears in SBA's size regulations, it applies to all of SBA's programs. That is, it applies to all situations in which a joint venture seeks to qualify as a ''small business concern.'' Because this confusion is limited and SBA believes that the size regulations clearly apply the three in two year rule to all joint venture situations, SBA does not believe that a regulatory change is necessary to specifically apply the rule to the 8(a) BD program.

This proposed rule would also amend § 124.513(e) to clarify the requirement that SBA approve 8(a) joint ventures prior to award for a second or third 8(a) contract award to a specific joint venture. The current regulation states that SBA must approve a joint venture for an 8(a) contract prior to contract award. There has been some confusion about how this requirement relates to the size provision which would now allow three contract awards over a two year period to a specific joint venture. Prior to the first contract award, SBA would have to approve the joint venture. SBA's review would examine the structure of the joint venture and the work each joint venture partner would perform on the proposed 8(a) contract. For the second (and third) 8(a) contract, SBA would not need to examine the structure of the joint venture again, but would need to determine that the work to be done by the joint venture partners on the proposed second (or third) 8(a) contract meets SBA's requirements. To this end, the 8(a) Participant to the joint venture must submit to SBA an addendum to the joint venture agreement explaining how the work will be performed on the contract, specifying what resources will be provided by each joint venture partner, and providing any other information necessary to fulfill the requirements set forth in 13 CFR 124.512(c). If the second (and/or third) contract to be awarded to a specific joint venture is not an 8(a) contract, the joint venture entity would not be required to submit an addendum to SBA prior to award, but would, as explained in the following paragraph, be required to meet the general 8(a) joint venture requirements.

Exclusion from Affiliation for Mentor/Protégé Joint Ventures

The third proposed change to the size regulations also pertains to exceptions to affiliation. Currently, SBA's regulations authorize an exception to affiliation where two firms approved by SBA to be a mentor and protégé under the 8(a) BD program seek to joint venture and perform a contract as a small business concern for any Federal Government procurement. For a procurement to be awarded through the 8(a) BD program, SBA's regulations at § 124.513 require SBA to approve the joint venture agreement prior to award and specify what must be included in the joint venture agreement. There has been some confusion as to whether the requirements for 8(a) joint venture agreements apply to non-8(a) procurements. SBA believes that any joint venture seeking to use the 8(a) mentor/protégé status as a basis for an exception to affiliation requirements must follow the 8(a) requirements (*i.e.,* it must meet the content requirements set forth in § 124.513(c) and the performance of work requirements set forth in § 124.513(d)). Although SBA does not approve joint venture agreements for procurements outside the 8(a) program, if the size of a joint venture claiming an exception to affiliation is protested, the requirements of § 124.513(c) and (d) must be met in order for the exception to affiliation to apply. The reason SBA's 8(a) regulations permit exceptions to affiliation on small business contracts outside the 8(a) program (*e.g.,* small business set asides, HUBZone set asides, service disabled veteran owned small business set asides) is to further assist protégé 8(a) BD Participants in their business development. If the requirements ensuring control and performance of work by the 8(a) protégé firm are not enforced, a large business would be able to have unchecked and inappropriate access to Federal procurements intended for small business. While this is not a change to how SBA has interpreted this regulation, SBA believes that it should be spelled out in the regulation to avoid any further confusion and, thus, clarifying language has been added to § 121.103(h)(3)(iii). SBA is also considering whether to limit the exclusion to affiliation for a joint venture that is comprised of a protégé firm and its SBA-approved mentor only to 8(a) contracts. If this proposal were adopted, mentor/protégé joint ventures for small business set aside contracts (or other small business contracts) would not receive an exclusion from affiliation. As such, if the mentor were a large business, the joint venture would be large and, thus, ineligible for a small business set aside contract. Proponents of this view believe that benefits for 8(a) firms should be limited to contracts obtained through the 8(a) program, and not extended to other small business programs. They believe that it is unfair for non-8(a) small business concerns to have to compete against a joint venture involving a protégé firm and a large mentor for small business contracts outside the 8(a) program. SBA specifically requests comments on whether this policy should be changed in a subsequent final rule.

Classification of a Procurement for Supplies

SBA's current regulations provide that acquisitions for supplies must be classified under the appropriate manufacturing NAICS code, not under a wholesale trade NAICS code. The fourth proposed change to the size regulations would clarify that a procurement for supplies also cannot be classified under a retail trade NAICS code.

Application of the Nonmanufacturer Rule

The fifth proposed change to the size regulations would provide further guidance to the current nonmanufacturer rule (*i.e.,* the rule that requires, in pertinent part, a firm that is not itself the manufacturer of the end item being procured to provide the product of a small business manufacturer). Several procuring agencies have misconstrued when to apply the nonmanufacturer rule. The proposed rule would explicitly state that the nonmanufacturer rule applies only where the procuring agency has classified a procurement as a manufacturing procurement by assigning the procurement a NAICS code under Sectors 31–33. It would also clarify that the nonmanufacturer rule does not apply to supply contracts that

do not involve manufacturing. For example, the nonmanufacturer rule would not apply to situations where a procuring agency is acquiring agricultural commodities that are not processed or changed and the procuring agency classifies the contract as crop production under NAICS Subsector 111.

In addition, the rule applies only to the manufacturing or supply component of a manufacturing procurement. The rule provides two examples to clarify SBA's position regarding the rule. Where a procuring agency has classified a procurement as a manufacturing procurement and is also acquiring services, the nonmanufacturer rule would apply to the supply component of that procurement only. In other words, a firm seeking to qualify as a small business nonmanufacturer must supply the product of a small business manufacturer (unless a nonmanufacturer waiver applies), but need not perform any specific portion of the accompanying services. Since the procurement is classified under a manufacturing NAICS code, it cannot also be considered a services procurement and, thus, the 50% performance of work requirement set forth in § 125.6 for services does not apply to that procurement. In classifying the procurement as a manufacturing/supply procurement, the procuring agency must have determined that the ''principal nature'' of the procurement was supplies. As a result, any work done by a subcontractor on the services portion of the contract cannot rise to the level of being ''primary and vital'' requirements of the procurement, and therefore cannot be the basis or affiliation as an ostensible subcontractor. Conversely, if a procuring agency determines that the ''principal nature'' of the procurement is services, only the requirements relating to services contracts apply. The nonmanufacturer rule, which applies only to manufacturing/supply contracts, would not apply. Thus, although a firm seeking to qualify as a small business with respect to such a contract must certify that it will perform at least 50% of the cost of the contract incurred for personnel with its own employees, it need not supply the product of a small business manufacturer on the supply component of the contract. In order to qualify as a nonmanufacturer, a firm must be primarily engaged in the retail or wholesale trade and normally sell the type of item being supplied. We are proposing to further define this statutory requirement to mean that the firm takes ownership or possession of the item(s) with its personnel, equipment or facilities in a manner consistent with industry practice. This change is primarily in response to situations where SBA has waived the nonmanufacturer rule and the prime contractor essentially subcontracts all services, such as warehousing or delivery, to a large business. Such an arrangement, where the prime contractor can legally provide the product of a large business and then subcontract all tangential services to a large business, is contrary to the intent and purpose of the Small Business Act, *i.e.,* providing small businesses with an opportunity to perform prime contracts. Such an arrangement inflates the cost to the Government of contract performance and inflates the statistics for prime contracting dollars awarded to small business, which is detrimental to other small businesses that are willing and able to perform Government contracts.

Request for Formal Size Determination

The sixth proposed change to the size regulations would amend § 121.1001(b) to give the SBA's Office of Inspector General (OIG) the authority to ask for a formal size determination. Because the OIG is not currently listed in the regulations as an individual who can request a formal size determination, the OIG must currently seek a formal size determination through the relevant SBA program office. SBA believes that the Inspector General should be able to seek a formal size determination when questions about a concern's size arise in the context of an investigation or other review of SBA programs by the Office of Inspector General.

Completion of Program Term

The first proposed change to SBA's 8(a) BD regulations is an amendment to the current rule to specify that a firm that merely completes its program term is not deemed to ''graduate'' from the 8(a) program. Pursuant to the Small Business Act, a Participant is considered to graduate only if it successfully completes the program by substantially achieving the targets, objectives, and goals contained in the concern's business plan, thereby demonstrating its ability to compete in the marketplace without 8(a) assistance. 15 U.S.C. 636(j)(10)(H). Sections 124.2, 124.301 and 124.302 would be amended to effect this change. In addition, the proposed rule would add a new § 124.112(f) to require SBA to determine if a firm should be deemed to graduate from the 8(a) BD program at the end of its nine-year program term. As part of the final annual review performed by SBA prior to the expiration of a Participant's nine-year program term, SBA would determine whether the firm has met the targets and objectives set forth in its business plan.

Definitional Changes

This rule would amend Section 124.3, to add a definition of NAICS code. Additionally, the term ''SIC code'' would be changed to ''NAICS code'' everywhere it appears in part 124 to take into account the replacement of the Standard Industry Classification (SIC) code system with the North American Industry Classification System. The NAICS code system is used to classify businesses for size purposes. Specifically, the term ''NAICS code'' would replace the term ''SIC code'' in §§ 124.110(c), 124.111(d), 124.502(c)(3), 124.503(b), 124.503(b)(1), 124.503(b)(2), 124.503(c)(1)(iii), 124.503(g)(3), 124.505(a)(3), 124.507(b)(2)(i), 124.513(b)(1), 124.513(b)(1)(i), 124.513(b)(1)(ii)(A), 124.513(b)(2), 124.513(b)(3), 124.514(a)(1), 124.515(d), 124.517(d)(1), 124.517(d)(2), 124.519(a)(1), 124.519(a)(2), 124.1002(b)(1), 124.1002(b)(1)(i), 124.1002(b)(1)(ii), and 124.1002(f)(3).

The rule also proposes to amend the definition of primary industry classification to specifically recognize that a Participant may change its primary industry classification over time. The rule would allow a Participant to change its primary industry classification from one NAICS code to another where it can demonstrate that the majority of its revenues during a two-year period have evolved from its former primary NAICS code to another NAICS code. The proposed rule would also add a new § 124.112(e) to permit a Participant to request a change in its primary industry classification with its servicing SBA district office where it can demonstrate that its revenues have in fact evolved from one NAICS code to another.

The rule would also add a definition of the term ''regularly maintains an office.'' This definition is important in determining whether a participant has a bona fide place of business in a particular geographic location. While the definition proposed is not a change in current SBA policy, SBA believes that the definition should be added to the regulations for clarity purposes. Under the proposed rule, a Participant would be deemed to regularly maintain an office in a particular location if it conducts business activities as an on-going business concern from a fixed location on a daily basis. The rule would also provide that the best evidence of the regular maintenance of an office is documentation that shows that third parties routinely transact

business with a participant at that location. Such evidence includes advertisements, bills, correspondence, lease agreements, land records, and evidence that the participant has complied with all local requirements concerning registering, licensing, or filing with the State or County where the place of business is located. This means that a firm would generally be required to have a license to do business in a particular location in order to ''regularly maintain an office'' there. The firm would not, however, be required to have a construction license or other specific type of license in order to regularly maintain an office and thus have a bona fide place of business in a specific location. SBA's bona fide place of business requirement is met with a license to do business generally. Whether a firm is or is not able to get a specific type of contract because it does not possess an additional license is not a bona fide place of business issue.

Size for Primary NAICS Code

This rule proposes to amend § 124.102(a) to require that a firm remain small for its primary NAICS code during its term of participation in the 8(a) BD program, and correspondingly to revise § 124.302 to permit SBA to graduate a Participant prior to the expiration of its program term where the firm exceeds the size standard corresponding to its primary NAICS code for two successive program years. SBA has historically permitted a firm to remain in the 8(a) program and receive 8(a) contracts in secondary NAICS codes as long as it remains small for such secondary codes. SBA has reexamined this policy and concluded that if a firm has grown to be other than small in its primary NAICS code, it can reasonably be said that the firm has achieved its goals and objectives. Understanding that the size of a firm can vary from year to year based on the receipts/number of employees in any given year, SBA is proposing that a firm be graduated early only where it exceeds the size standard for its primary NAICS code in two successive program years. SBA believes that it would be unfair to early graduate a firm from the 8(a) program where it has one very successful program year that may not again be repeated. This does not mean that a firm cannot change its primary NAICS code during its participation in the program. As noted in the Supplementary Information corresponding to the definition of primary industry classification in § 124.3, the proposed rule would authorize a firm to change its primary NAICS code by demonstrating that the majority of its revenues during a two-year period have evolved from its former primary NAICS code to another NAICS code. As such, SBA may early graduate a firm from the 8(a) BD program if the firm exceeds the size standard corresponding to its primary NAICS code (whether its initial primary NAICS code or a revised primary NAICS code) for two successive program years.

Economic Disadvantage

SBA proposes to amend § 124.104 *Who is Economically Disadvantaged?* to incorporate into the regulations certain interpretations and policies that have been followed informally by SBA. Some of these policies and regulatory interpretations are currently set forth in SBA's Standard Operating Procedures (SOPs) or in decisions rendered by the SBA Office of Hearings and Appeals (OHA). A sentence would be added to paragraph (b)(2) to clarify that SBA does not take community property laws into account when determining economic disadvantage. This means that property that is legally in the name of one spouse would be considered wholly that spouse's property, whether or not the couple lived in a community property state. Since community property laws are usually applied when a couple separates and since spouses in community states generally have the freedom to keep their property separate while they are married, SBA has decided to treat property owned solely by one spouse as that spouse's property for economic disadvantage determinations. This policy also results in equal treatment for applicants in community and non-community property states. Community property laws will continue to be applied in § 124.105(k) for purposes of determining ownership of an applicant or Participant firm, but they will not be applied for any other purpose. Paragraph (b)(2) would also be amended to provide that SBA may consider a spouse's financial situation in determining an individual's access to capital and credit. This addition reflects current practice.

Paragraph (c)(2) would be amended to exempt funds in Individual Retirement Accounts (IRAs) and other official retirement accounts from the calculation of net worth provided that the funds cannot currently be withdrawn from the account prior to retirement age without a significant penalty. Retirement accounts are not assets to be currently enjoyed, rather they are held for purposes of ensuring future income when an individual is no longer working. SBA believes it is unfair to count those assets as current assets. Through experience SBA has found that the inclusion of IRA's and other retirement accounts in the calculation of an individual's net worth does not serve to disqualify wealthy individuals from participation in the program; rather, it has worked to make middle and lower income individuals ineligible to the extent they have invested prudently in accounts to ensure income at a time in their lives that they are no longer working. SBA is cognizant of the potential for abuse of this proposed provision, with individuals attempting to hide current assets in funds labeled ''retirement accounts.'' Obviously, SBA does not believe such attempts to remove certain assets from an individual's economic disadvantage determination would be appropriate. Therefore, it has added the condition that in order for funds not to be counted in an economic disadvantage determination, the funds cannot be currently withdrawn from the account without a significant penalty. A significant penalty would be one equal or similar to the penalty assessed by the Internal Revenue Service for early withdrawal. In order for SBA to determine whether funds invested in a specific account labeled a ''retirement account'' may be excluded from an individual's net worth calculation, the individual must provide to SBA information about the terms and conditions of the account. SBA is interested in hearing from the public concerning this proposed revision, and specifically requests comments on how best to exclude legitimate retirement accounts without affording others a mechanism to circumvent the economic disadvantage criterion.

SBA is also proposing to amend paragraph (c)(2) to exempt income from an S Corporation from the calculation of both income and net worth to the extent such income is reinvested in the firm or used to pay taxes arising from the normal course of operations of an S corporation. Therefore, while the income of an S corporation flows through and is taxed to individual shareholders in accordance with their interest in the S corporation for Federal tax purposes, SBA will take such income into account for economic disadvantage purposes only if it is actually distributed to the particular shareholder. This change would result in equal treatment of corporate income for C and S corporations. In cases where that income is reinvested in the firm or used to pay taxes arising from the normal course of operations of the S corporation and not retained by the individual, SBA believes it should be treated the same as C corporation

income for purposes of determining economic disadvantage. In order to be excluded, the owner of the S corporation would be required to clearly demonstrate that he or she paid taxes of the S corporation or reinvested certain funds into the S corporation within 12 months of the distribution of income. Conversely, the owner of an S corporation could not subtract S corporation losses from the income paid by the S corporation to him/her or from the individual's total income from whatever source. S corporation losses, like C corporation losses, are losses to the company only, not losses to the individual, and based upon the legal structure of the corporation and the protections affording the principals through this structure, the individual is not personally liable for the debts representing any of those liabilities. Thus, it is inappropriate to consider these personal losses and individuals should not be able to use them to reduce their personal incomes.

A new paragraph (c)(3) would be added to provide that SBA would presume that an individual is not economically disadvantaged if his or her adjusted gross income averaged over the past two years exceeds $200,000. SBA considered incorporating into the regulation the present policy that an individual is not economically disadvantaged if his or her adjusted gross income exceeds that for the top two percent of all wage earners according to Internal Revenue Service (IRS) statistics. Under the current approach, SBA compares the income of the individual claiming disadvantage to the most currently available final IRS income tax return data. In some cases, SBA may be comparing IRS information relating to one tax year to an individual's income from a succeeding tax year because final IRS information is not available for that succeeding tax year. Although that policy has been upheld by SBA's OHA and the Federal courts (*see SRS Technologies* v. *United States,* 894 F. Supp. 8 (D.D.C. 1995); *Matter of Pride Technologies, Inc.,* SBA No. 557 (1996) SBA No. MSB–557), SBA believes that a straight line numerical figure is more understandable, easier to implement, and avoids any appearance of unfair treatment when statistics for one tax year are compared to an income level for another tax year. SBA is proposing an income level of $200,000 because that figure closely approximates the income level corresponding to the top two percent of all wage earners, which has been upheld as a reasonable indicator of a lack of economic disadvantage. Although a $200,000 income may seem unduly high as a benchmark, we note that this amount is being used only to presume, without more information, that the individual is not economically disadvantaged. We also note that average income for a small business owner is higher than average income for the population at large. SBA may consider incomes lower than $200,000 as indicative of lack of economic disadvantage. However, it would not presume lack of economic disadvantage in that case. It may also consider income in connection with other factors when determining an individual's access to capital. SBA specifically requests comments on both the straight line approach proposed and the current comparison of income levels to the IRS statistics. The rule also proposes to establish a two year average income level of $250,000 for continued 8(a) BD program eligibility. SBA believes that a higher income level may be more appropriate as a firm becomes more developed, but does not want to sanction too high a level. SBA requests comments on the $250,000 level, including whether the same $200,000 level should be used for both initial and continued 8(a) BD eligibility and whether some other level (*e.g.,* $225,000) should be used for continued eligibility.

The proposed regulation would permit applicants to rebut the presumption of lack of economic disadvantage upon a showing that the income is not indicative of lack of economic disadvantage. For example, the presumption could be rebutted by a showing that the income was unusual (inheritance) and is unlikely to occur again or that the earnings were offset by losses as in the case of winnings and losses from gambling resulting in a net gain far less than the actual income received. SBA may still consider any unusual earnings or windfalls as part of its review of total assets. Thus, although an inheritance of $5 million, for example, may be unusual income and excluded from SBA's determination of economic disadvantage based on income, it would not be excluded from SBA's determination of economic disadvantage based on total assets. In such a case, a $5 million inheritance would render the individual not economically disadvantaged based on total assets. This paragraph would also provide that S corporation income will not be considered in determining an individual's average income if the S corporation owner submits evidence that such income was reinvested in the firm or used to pay corporate taxes within 12 months of the distribution of income. Again, while the income of an S corporation flows through and is taxed to individual shareholders in accordance with their interest in the S corporation, SBA will take such income into account only if it is actually distributed to the particular shareholder.

This rule also proposes to amend § 124.104(c) to establish an objective standard by which an individual can qualify as economically disadvantaged based on his or her total assets. The regulations have historically authorized SBA to use total assets as a basis for determining economic disadvantage, but did not identify a specific level below which an individual would be considered disadvantaged. The regulations also did not spell out a specific level of total assets above which an individual would not qualify as economically disadvantaged. Although SBA has used total assets as a basis for denying an individual participation in the 8(a) BD program based on a lack of economic disadvantage, the precise level at which an individual no longer qualifies as economically disadvantaged is not certain. SBA's findings that an individual was not economically disadvantaged with total asset levels of $4.1 million and $4.6 million have been upheld as reasonable. *See Matter of Pride Technologies,* SBA No. 557 (1996), and *SRS Technologies* v. *U.S.,* 843 F. Supp. 740 (D.D.C. 1994). Alternatively, SBA's finding that an individual was not economically disadvantaged with total assets of $1.26 million was overturned. *See Matter of Tower Communications,* SBA No. 587 (1997). This rule proposes to eliminate any confusion as to what level of total assets qualifies as economic disadvantage for 8(a) BD purposes. Under the proposed rule, an individual would not be considered economically disadvantaged if the fair market value of all his or her assets exceeds $3 million at the time of 8(a) application and $4 million for purposes of continued 8(a) BD program participation. While the proposed rule would exclude retirement accounts from an individual's net worth in determining economic disadvantage, it would not exclude such amounts from the individual's total assets in determining economic disadvantage on that basis.

Changes to Ownership Requirements

SBA is proposing to amend § 124.105(g) governing ownership to provide more flexibility in determining whether to admit to the 8(a) program companies owned by individuals where such individuals have immediate family members who are owners of current or

former 8(a) concerns. The current rule provides that ''the individuals determined to be disadvantaged for purposes of one Participant, their immediate family members, and the Participant itself, may not hold, in the aggregate, more than a 20 percent equity ownership interest in any other single Participant.'' Because of the wording of that provision, SBA has been forced to deny 8(a) program admission to companies solely because the owners of those firms have family members who are disadvantaged owners of other 8(a) concerns. In some cases, the two firms are in different industries and are located in different parts of the country.

SBA believes that it serves no purpose to automatically disqualify a firm simply because the individual seeking to qualify the firm has an immediate family member already participating in the program. Although there may be situations in which SBA would choose to deny admission to a firm based on a family member's program participation, such a decision must necessarily be made on a case-by-case basis. For example, SBA may wish to deny admission to the program to a construction firm owned by a woman whose father owns an 8(a) firm in the construction industry where the program term of the father's firm is about to end, if it appears that the daughter does not have sufficient management experience to manage the firm and there are indications that the applicant is simply a front for the current firm.

In order to prevent disadvantaged individuals from using family members to extend their program terms and to prevent fronts, SBA proposes to amend § 124.105(g) to provide that an individual may not use his or her disadvantaged status to qualify a firm if such individual has an immediate family member who has used his or her disadvantaged status to qualify another firm for participation in the 8(a) BD program. However, the proposed rule will permit the SBA's Associate Administrator for Business Development (AA/BD) to waive this prohibition under certain circumstances. Those circumstances are similar to the clear line of fracture exception to the identity of interest rule in the size regulations.

SBA would waive the prohibition where there are no or negligible connections between the two firms, either in the form of ownership, control or contractual relations, and where the individual seeking to use his or her disadvantaged status to qualify the firm can demonstrate he or she has sufficient management and technical experience to operate the firm. If a firm seeking a waiver is in the same or similar line of business as a current or former 8(a) Participant of a family member, there would be a presumption against granting a waiver. The applicant must provide clear and compelling evidence that no connection exists between the two firms.

SBA believes that this narrow exception to the general prohibition against family members owning 8(a) concerns in the same or similar line of business will permit the Agency sufficient flexibility to admit firms where they are clearly operating separately and independently from the relative's firm. SBA also proposes to add a provision specifying that it may terminate an 8(a) concern for which it had granted a waiver if connections between the two firms become apparent (*e.g.,* sharing of employees, contractual relationships between the two firms) or if that firm begins to operate in the same or a similar line of business as the current or former 8(a) concern owned by the disadvantaged immediate family member.

SBA also proposes to amend § 124.105 to add a phrase that was inadvertently omitted from the current rule. The words ''or a principal of such firm'' were inadvertently omitted from § 124.105(h)(2) after the words ''A non-Participant concern.'' That provision prohibits concerns in the same or a similar line of business as an 8(a) concern from owning more than a 10 percent interest in an 8(a) concern in the developmental stage of program participation or more than a 20 percent interest in a Participant in the transitional stage of the program. The intent was to also prohibit principals of such concerns from owning these same percentages. However, the necessary language to effect this was inadvertently omitted. This omission is made particularly evident by the rule permitting former Participants and principals of former Participants to own up to 20 percent of a program Participant in the developmental stage of program participation and up to 30 percent of a Participant in the transitional stage. The anomalous result of the omission was to permit principals of non-8(a) concerns to own greater percentages of 8(a) firms in the same or similar line of business than principals of former 8(a) concerns even though the clear intent of the rule was to afford former 8(a) firms and their principals greater ownership rights. SBA has corrected that error in this proposed rule.

Changes to Control Requirements

SBA also proposes to amend § 124.106, which addresses control of an 8(a) applicant or Participant. SBA proposes to add an additional requirement to this section that the disadvantaged manager of an 8(a) applicant or Participant must reside in the United States and spend part of every month physically present at the primary offices of the applicant or Participant. This change is being proposed in response to a recent Small Disadvantaged Business (SDB) eligibility appeal before SBA's Office of Hearings and Appeals. In OHA's decision on that case, which was vacated on other grounds, the Administrative Judge held that a disadvantaged owner of a firm seeking SDB status controlled the firm from her residence in Paris, France. SBA believes that an individual seeking to qualify as eligible for the SBA's 8(a) BD program must reside in the United States. There is a presumption in the regulations for such residency, but it is not explicit. The regulations require an individual seeking 8(a) eligibility to be a citizen of the United States and individuals who are non-designated group members are required to establish their individual social disadvantage based on instances of bias or discrimination ''in American society, not in other countries.'' In addition, SBA believes that in order for an individual to exercise the requisite degree of control of an 8(a) firm, such individual must be physically present at the offices of the firm at least part of every month. In SBA's view, the potential for negative control is great when an individual on-site manager is relied on by an absent chief executive. The proposed rule would also add a conforming change to the general requirements for 8(a) BD eligibility contained in § 124.104(a) to recognize the residency requirement.

The Agency recognizes that the 21st century has created new opportunities for off-site management through the increased use of e-mail and overnight express and decreasing interstate and international telephone costs, and that these new and improved technologies enable managers to maintain control over the operations of their businesses without the need for a constant or consistent physical presence. Nevertheless, SBA believes that in order to prevent negative control and to ensure that the disadvantaged majority owner(s) are the true managers of the 8(a) concern or applicant, the disadvantaged manager must generally be present in the firm's primary offices at least part of every month and must be

able to physically reach the firm in a matter of a few hours from his or her residence should the need arise. SBA considered requiring physical presence by the individual(s) claiming disadvantaged status in the headquarters of the applicant or participant firm for a minimum amount of time each month (*e.g.,* 10 hours, 20 hours, or some other higher number of hours) and specifically asks for comments on whether such a requirement makes sense in today's world (and, if so, what should the minimum number of hours be) or whether control should be determined on a case-by-case basis. SBA also understands that any provision requiring presence in every month may be unworkable. With such a strict requirement, a disadvantaged owner who took a month-long vacation one year would be ineligible for continued 8(a) BD participation. As such, the proposed rule has the requirement that a disadvantaged owner must ''generally'' spend part of every month at the firm's principal office, imposing a monthly presence requirement while at the same time allowing for unusual circumstances in any given month.

Section 124.106 would also be amended by deleting the word ''such'' from the second sentence in the preamble of paragraph (e) so as to make clear that paragraphs (e)(1) and (e)(2) apply to all non-disadvantaged individuals and not just to those non-disadvantaged individuals involved in the management of an applicant or Participant or who are stockholders, partners, limited liability members, officers, or directors of the applicant or Participant. This change is needed to correct a misinterpretation of this regulation by SBA's Office of Hearings and Appeals (OHA). That decision, *In the Matter of Avasar Corporation,* No. 209 (August 24, 2004), incorrectly held that paragraphs (a)(1), (a)(2), and (a)(3) as well as paragraph (g) of § 124.106 concerning non-disadvantaged control, applied only to non-disadvantaged individuals involved in the management of an applicant or Participant, or stockholders, partners, limited liability members, officers, and/or directors of the applicant or Participant. The result of that decision was that under certain circumstances, non-disadvantaged individuals would be permitted to control an 8(a) concern. This is an absurd result and contrary to statute. The proposed change makes it clear that the above paragraphs apply to all non-disadvantaged individuals, regardless of their current or former relationship to the applicant or Participant.

The proposed rule would also add a new § 124.106(h) regarding control of an 8(a) BD Participant where a disadvantaged individual upon whom eligibility is based is a reserve component member in the United States military who has been called to active duty. Currently, there is no statutory or regulatory authority to permit such a firm to stay in the 8(a) BD program, whether on an active or inactive basis, while the individual upon whom eligibility is based is away from the firm for an extended period of time. Some have even questioned whether SBA should in fact terminate such a firm from the 8(a) BD program for failure to maintain control by one or more disadvantaged individuals. SBA believes that termination in these circumstances would be inappropriate. Specifically, the proposed rule would permit a Participant to designate one or more individuals to control its daily business operations during the time that a disadvantaged individual upon whom eligibility has been called to active duty in the United States military. The proposed rule would also amend § 124.305 to authorize the Participant to suspend its 8(a) BD participation during the active duty call-up period. If the Participant elects to designate one or more individuals to control the concern on behalf of the disadvantaged individual during the active duty call-up period, the concern will continue to be treated as an eligible 8(a) Participant and no additional time will be added to its program term. If the Participant elects to suspend its status as an eligible 8(a) Participant, the Participant's program term would be extended by the length of the suspension when the individual returns from active duty.

Benchmarks

The proposed rule would remove § 124.108(f), as well as other references to the achievement of benchmarks contained in §§ 124.302(d), 124.403(d), and 124.504(d). When these regulations were first implemented, the Department of Commerce was supposed to update industry codes every few years to determine those industries which minority contractors were underrepresented in the Federal market. It is SBA's view that because these industry categories have never been revised since the initial publication, references to them are outdated and should be removed.

Changes Applying Specifically to Tribally-Owned Firms

The Small Business Act permits 8(a) Participants to be owned by ''an economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe).'' 15 U.S.C. 637(a)(4)(A)(i)(II). The term Indian tribe includes any Alaska Native village or regional corporation. 15 U.S.C. 637(a)(13). Pursuant to the Alaska Native Claims Settlement Act, a concern which is majority owned by an Alaska Native Corporation (ANC) is deemed to be both owned and controlled by Alaska Natives and an economically disadvantaged business. As such, ANCs do not have to establish that they are ''economically disadvantaged.'' Conversely, Indian tribes are not afforded the same automatic statutory economic disadvantage designation. Current § 124.109(b) requires tribes to demonstrate their economic disadvantage through the submission of data, including information relating to tribal unemployment rate, per capita income of tribal members, and the percentage of the tribal population below the poverty level. SBA requests comments on how best to determine whether a tribe should be considered ''economically disadvantaged.'' Some have advocated a bright line assets or net worth test for tribes. SBA is not convinced that such a test truly captures the economic disadvantage status of a tribe. SBA continues to believe that the factors set forth in current § 124.109(b)(2) paint a truer picture, but specifically requests comments from tribes on this issue. The current regulation also requires a tribe to demonstrate its economic disadvantage only once. SBA also requests comments regarding whether this one time demonstration of economic disadvantage makes sense.

The proposed rule would also amend § 124.109(c)(3)(ii) to more clearly define the type of work that a tribally-owned firm may perform in the 8(a) program. One of the goals of the 8(a) BD program is to develop businesses to the point where they can be independent, viable businesses when they graduate or otherwise leave the 8(a) BD program. In order to encourage a tribally-owned firm to continue to operate as an independent business after it leaves the 8(a) BD program, SBA has prohibited for many years a tribally-owned applicant from having the same primary NAICS code as another firm in the 8(a) BD program owned by the same tribe or one that has left the program within the last two years. It could perform secondary work in such a NAICS code, but it could not duplicate the primary NAICS code of another or recently former tribally-owned 8(a) Participant. SBA believed that this requirement would encourage tribes to expand their business activities

by having two or more viable businesses doing separate and distinct work. In some cases, however, SBA admitted a second tribally-owned firm into the 8(a) BD program under one primary NAICS code and it immediately began to perform all or most of its work in a NAICS code that was the primary NAICS code of a firm owned by the tribe that recently graduated from the 8(a) BD program. This is not what SBA envisioned. Again, the purpose of the 8(a) BD program is to promote business development. Having one business take over work previously performed by another does not advance the business development of two distinct firms. In order to further encourage the continued, long-term viability of two separate businesses, this rule proposes that a newly certified tribally-owned Participant cannot receive an 8(a) contract in a secondary NAICS code that is the primary NAICS code of another Participant (or former participant that has left the program within two years of the date of application) owned by the tribe for a period of two years from the date of admission to the program. SBA also considered allowing such secondary work on a limited basis (*e.g.,* no more than 20% or 30% of its 8(a) work could be in a NAICS code that was/is the primary NAICS code of a former/other tribally-owned Participant). SBA seeks comments on both approaches.

SBA also proposes to delete the word ''disadvantaged'' in § 124.109(c)(4) to make clear that any tribal member may participate in the management of a tribally-owned firm and need not individually qualify as economically disadvantaged. Under current rules, a tribal member would generally have to qualify as economically disadvantaged to run the daily business operations of a tribally-owned concern. Tribal representatives emphasized the need for this change to enable them to attract the most qualified tribal members to assist in running tribal businesses and further allow them to assist economic and community development through their tribally-owned concerns. SBA agrees that the current rule is overly restrictive and proposes this change. This change would also eliminate the requirement that directors and officers must submit copies of their individual tax returns to establish their economic disadvantage. If, however, there is a question as to whether an individual filed taxes, SBA could request proof of payment of taxes to satisfy the good character requirement. SBA also requests specific comments on whether the individuals involved in the management of a tribally-owned concern should be members of the tribe that owns the concern or, in the alternative, whether membership in any tribe should suffice. Currently, the regulations generally require management by individuals who are members of the tribe that owns the concern. SBA requests comments on whether that is too restrictive for the tribal community.

This rule also proposes to clarify the potential for success requirement for tribally-owned applicants contained in § 124.109(c)(6). SBA believes that the current regulation does not adequately capture the realities of tribally-owned firms. In substantial part, the current regulation for potential for success applicable to tribally-owned firms is the same as that applicable to firms owned by socially and economically disadvantaged individuals. Under the current rule, the firm must generally be in business for two years and have revenues in its primary industry classification. A firm that is in business for less than two years may be deemed to possess the necessary potential for success if the individuals who manage and control its daily operations have substantial technical and managerial experience, the applicant has a record of successful performance on contracts in its primary industry category, and the applicant has adequate capital to sustain its business operations. SBA believes that those two approaches continue to be valid ways to find that a tribally-owned firm meets the potential for success requirement. In addition, SBA believes that a third basis to find potential for success should be made available to tribally-owned firms. It is undisputed that a firm owned by a tribe may have financial and physical resources available to it that a firm owned by one or more disadvantaged individuals may not have. While a firm owned by disadvantaged individuals is designed to make a profit and its survivability depends on its ability to do so, that is not necessarily the case for a tribally-owned concern. The purpose of a tribally-owned concern may be to increase tribal employment, assist in tribal community development, or serve other tribal needs. If a tribe pledges to use the resources of the tribe to support an applicant concern and to not allow that concern to cease its operations, SBA believes that the concern should be deemed to meet the potential for success requirement. As such, this rule proposes to find potential for success where a tribe has made a firm written commitment to support the operations of the applicant concern and the tribe has the financial ability to do so.

The Government Accountability Office (GAO) and SBA's Office of Inspector General have recently reviewed participation in the 8(a) BD program by firms owned by ANCs. These reviews questioned certain aspects of SBA's oversight of ANC-owned firms. In particular, there was a concern that SBA did not adequately track the extent to which the benefits of the 8(a) BD program reached individual Alaska natives or the native community. As such, SBA proposes to amend the requirements for annual reviews contained in § 124.112(b) to require the submission of such information. SBA also believes that the same reporting requirements should apply to 8(a) Participants owned by tribes, Native Hawaiian Organizations (NHOs), and Community Development Corporations (CDCs). Specifically, the proposed rule would require each Participant owned by a tribe, ANC, NHO or CDC to submit information showing how its 8(a) participation has benefited the tribal or native members and/or the tribal, native or other community as part of its annual review submission. The firm should submit information relating to funding cultural programs, employment assistance, jobs, scholarships, internships, subsistence activities, and other services to the affected community.

Excessive Withdrawals

The proposed rule would also amend § 124.112(d) requiring what amounts should be considered excessive withdrawals, and thus a basis for possible termination or early graduation. SBA believes that the current definition of withdrawal unreasonably restricts Participants. For example, by including the income of all officers and all bonuses, a Participant is hampered in its ability to recruit and retain key employees or to pay fair wages to its officers. Under the current regulation, if the income of all officers in the aggregate exceeds $300,000 for a multimillion dollar firm, the income alone would be deemed ''excessive'' and could be a basis for termination or early graduation. SBA believes that this does not make sense, particularly in light of the income level permitted in determining economic disadvantage. In determining whether an individual is economically disadvantaged, SBA has determined that individuals claiming disadvantage may earn income of up to $200,000 without jeopardizing their economic disadvantage status for initial eligibility, and as noted above, up to $250,000 for continued 8(a) BD program eligibility. As such, a firm could pay two officers $175,000 each and those

officers would be deemed economically disadvantaged under the regulations, but in doing so, the firm would also be deemed to have made excessive withdrawals to those two individuals and be a possible basis for termination or early graduation. SBA also believes that the definition of withdrawal restricts a Participant from exercising business judgment in the operation of the concern. SBA's intent when the definition was initially promulgated was to prevent a ''cashing out'' of earnings from the Participant by its owners or managers. Thus, this rule proposes to modify the definition of withdrawal to generally eliminate the inclusion of officers' salaries within the definition of the term withdrawal. The rule also proposes to generally exclude other items currently included within the definition of withdrawal. SBA acknowledges, however, that some firms may try to circumvent the excessive withdrawal limitations through the distribution of salary or by other means. To take that possibility into account, the proposed rule would authorize SBA to look at the totality of the circumstances in determining whether to include a specific amount as a ''withdrawal.'' If SBA believes that a firm is attempting to get around the excessive withdrawal limitations though the payment of officers' salaries, SBA would count those salaries as withdrawals in such a situation.

The rule also would amend § 124.112(d)(3) pertaining to withdrawal thresholds for purposes of determining whether the withdrawal is in fact excessive. The proposed rule would amend § 124.112(d)(3) to increase the current ''excessive'' amounts by $50,000 at the two lower levels, and by $100,000 for the highest level. Thus, for firms with sales of less than $1,000,000 the excessive withdrawal amount would be $200,000 instead of $150,000, for firms with sales between $1,000,000 and $2,000,000 the excessive withdrawal amount would be $250,000 instead of $200,000, and for firms with sales exceeding $2,000,000 the excessive withdrawal amount would be $400,000 instead of $300,000. SBA also asks for comments as to whether the excessive withdrawal level for higher revenue firms should be tied to each owner or officer of the firm instead of to the firm as a whole, and, if so, what level should be deemed excessive for an individual.

Applications to the 8(a) BD Program

The proposed rule would make minor changes to §§ 124.202, 124.203, 124.204 and 124.205 to emphasize SBA's preference that applications for participation in the 8(a) BD program be submitted in an electronic format. The use of the electronic application not only reduces the administrative burden on SBA, but is reflective of a government-wide shift to use electronic applications and forms whenever possible. Entering the application online is the most efficient method to apply for 8(a) BD program participation since it allows SBA to promptly process the application once the supporting documentation is received. Most importantly, prior to entering the information into the online 8(a) BD application, the system reminds the applicant to enter/update the firm's Central Contractors Registration (CCR) and Dynamic Small Business Search (DSBS) profiles. The information in these databases ensures that the firm's capabilities are advertised to any Federal, State or local government, prime contractor, or other business organization looking for the capabilities the firm offers. The proposed rule permits a concern that does not have access to the electronic format or does not wish to file an electronic application to request a hard copy application from the AA/BD. The rule also clarifies that in all cases (whether an electronic or hard copy application is filed) those individuals claiming disadvantage status must submit wet signatures as part of the application.

The proposed rule would also change the location for SBA's initial review of applications from ANC-owned firms. The current regulation specifies that SBA's Anchorage, Alaska District Office would initially review all applications from ANC-owned applicants. SBA believes that the San Francisco DPCE unit is better suited to receive and review applications from ANC-owned applicants because it has more knowledge of SBA's eligibility requirements, in addition to having knowledge of issues specific to ANC-owned firms. As such, the proposed rule would provide that applications for 8(a) BD certification from ANC-owned firms will be reviewed and processed by the San Francisco DPCE unit. SBA would have the discretion to require an ANC-owned applicant to submit its application to the Philadelphia DPCE unit in appropriate circumstances, such as where there is an uneven distribution of applications and the San Francisco DPCE unit as a backlog of cases while the Philadelphia DPCE unit does not.

SBA is also proposing to add a new paragraph to § 124.204, which governs application processing, to clarify that the burden of proof to demonstrate eligibility for participation in the 8(a) BD program is on the applicant and to permit SBA to presume that information requested but not submitted would be adverse. Under the proposed regulation, if SBA makes a specific request for relevant information and that information is not provided, SBA may presume that the information would be adverse to the firm and conclude that the firm has not demonstrated eligibility in the area to which the information relates. A similar provision has existed as part of SBA's size regulations for many years and is cited regularly in SBA size determinations.

Graduation

Section 124.301 and 124.302 would be amended to utilize the terms ''early graduation'' and ''graduation'' in a way that matches the statutory meaning of those terms. *See* amendment to § 124.2, explained above.

Termination From the 8(a) BD Program

The proposed rule would amend three paragraphs in § 124.303 regarding termination from the 8(a) BD program. Section 124.303(a)(2) would be amended to specifically clarify that a Participant could be terminated from the program where an individual owner or manager exceeds any of the thresholds for economic disadvantage (*i.e.,* net worth, personal income or total assets), or is otherwise determined not to be economically disadvantaged, where such status is needed for the Participant to remain eligible, and where the Participant has not met the targets and objectives set forth in its business plan. This regulatory change is needed to rectify a decision made by SBA's OHA in the case of *Digital Management, Inc.,* SBA No. BDP–288 (2008). The Small Business Act provides, in pertinent part, that ''[i]f the [SBA] determines * * * that a Program Participant and its disadvantaged owners are no longer economically disadvantaged for the purpose of receiving assistance * * * the Program Participant shall be graduated'' from the 8(a) BD program. 15 U.S.C. 637(a)(6)(C)(ii). In addition, as noted above, the Small Business Act provides that ''the term 'graduated' or 'graduation' means that the Program Participant is recognized as successfully completing the program by substantially achieving the targets, objectives, and goals contained in the concern's business plan thereby demonstrating its ability to compete in the marketplace without assistance * * *'' 15 U.S.C. 636(j)(10)(H). In *Digital Management,* the individual upon whom 8(a) BD eligibility was based no longer qualified as economically disadvantaged. Because the Participant firm had not yet met the targets, objectives, and goals contained

in its business plan, SBA did not believe that early ''graduation'' was required, and instead commenced proceedings to terminate the Participant from the 8(a) BD program. The basis for the termination action was the Participant's failure to maintain its eligibility for program participation, as set forth in current § 124.303(a)(2). OHA ruled that termination was inappropriate and that the SBA should have utilized the early graduation procedures. SBA believes that early graduation was not mandated under 15 U.S.C. 637(a)(6)(C)(ii) because SBA had not determined that both the Program Participant and its disadvantaged owners were no longer economically disadvantaged, but rather that only the disadvantaged owner was no longer economically disadvantaged. The SBA's early graduation regulations at § 124.302(a)(2) authorize early graduation where one or more disadvantaged owners upon whom eligibility is based are no longer economically disadvantaged, but do not require it. While SBA must early graduate a firm from the 8(a) BD program where one or more disadvantaged individuals upon whom eligibility is no longer economically disadvantaged and where the firm has met the targets, objectives and goals set forth in its business plan, SBA believes that it has the discretion to either terminate or early graduate a firm where one or more owners claiming disadvantaged status are no longer economically disadvantaged, but the firm has not met the targets, objectives and goals set forth in its business plan. This proposed change would more clearly provide for that discretion.

Section 124.303(a)(13) would be amended to be consistent with the proposed changes to § 124.112(d)(13) regarding excessive withdrawals being a basis for termination.

Section 124.303(a)(16) would be amended to remove the reference to part 145, a regulatory provision that addresses nonprocurement debarment and suspension that was moved to 2 CFR parts 180 and 2700.

Effect of Early Graduation or Termination

SBA also proposes to amend § 124.304(f) regarding the effect an early graduation or termination would have. When SBA early graduates or terminates a firm from the 8(a) BD program, proposed § 124.304(f)(2) would generally not permit the firm to self certify that it qualifies as an SDB for future procurement actions. If the firm believes that it does qualify as an SDB and seeks to certify itself as an SDB, the firm must notify the contracting officer that SBA early graduated or terminated the firm from the 8(a) BD program. The firm must also demonstrate either that the grounds upon which the early graduation or termination was based do not affect its status as an SDB, or that the circumstances upon which the early graduation or termination was based have changed and the firm would now qualify as an SDB. For example, if SBA terminates a firm from the 8(a) BD program for a persistent pattern of failing to provide required financial information, the reason for termination would not be connected to ownership, control, social disadvantage or economic disadvantage. As such, the firm could continue to qualify as an SDB, without making any changes to its business structure or management. Whenever a firm notifies a contracting officer that it has been terminated or early graduated by SBA along with its SDB certification, the contracting officer must protest the SDB status of the firm so that SBA can make a formal eligibility determination.

Suspensions for Call-Ups to Active Duty

As noted above, the proposed rule would amend § 124.305 to permit SBA to suspend an 8(a) Participant where the individual upon whom eligibility is based can no longer control the day-to-day operations of the firm because the individual is a reserve component member in the United States military who has been called to active duty. Suspension in these circumstances is intended to preserve the firm's full term in the program by adding the time of the suspension to the end of the Participant's program term when the individual returns to control its daily business operations. Suspension would not be needed where one or more additional disadvantaged individuals remain to control the Participant after the reservist's call-up to active duty, or where the Participant elects to designate a non-disadvantaged individual to control the concern during the call-up period pursuant to proposed § 124.106(h). In such a case, the firm would remain an active Participant in the 8(a) BD program and could continue to receive new 8(a) contracts and other program assistance.

Task and Delivery Order Contracts

SBA is proposing to amend § 124.503(h), which addresses task and delivery order contracts. Agencies are increasingly reserving prime contract awards for small business concerns under multiple award solicitations that are competed on a full and open basis. Agencies are also awarding multiple award contracts that provide that competition for certain orders will be limited based on socio-economic status, including status as an 8(a) concern. Historically, agencies could count an order towards their 8(a) prime contracting goals only if the contract under which the order was placed was awarded either sole source or based on competition limited exclusively to 8(a) concerns. Over the years, the 8(a) BD program office has received numerous requests from procuring agencies to receive 8(a) credit for orders awarded to 8(a) concerns under contracts that were not set aside for exclusive competition among 8(a) concerns. On June 7, 2000, SBA entered into a Memorandum of Understanding (MOU) with the General Services Administration which allowed ordering agencies to receive 8(a) credit for orders awarded to 8(a) concerns under full and open Multiple Award Schedule contracts. That MOU expired on September 30, 2003. SBA had concerns with renewing the MOU as written because it did not provide for competition solely among eligible 8(a) firms as required by the Small Business Act for 8(a) competitive awards. SBA has also authorized other agencies to take 8(a) credit for orders placed with 8(a) concerns under full and open multiple award contracts, based on the procedures applicable to the particular multiple award procurement. In order to help 8(a) concerns compete in the current multiple-award contracting environment, SBA is proposing to amend § 124.503(h) to allow agencies to receive 8(a) credit for orders placed with 8(a) concerns under contracts that were not set aside for 8(a) concerns as long as the order is offered to and accepted for the 8(a) BD program and competed exclusively among eligible 8(a) concerns, and as long as the limitations on subcontracting provisions apply to the individual order. To be an ''eligible'' 8(a) concern, the firm must be a current Participant in the 8(a) BD program as of the date specified for receipt of offers contained in the solicitation for the order and otherwise meet the requirements set forth in § 124.507(b)(2). This proposed change would merely allow contracting officers the discretion to reserve orders for 8(a) concerns if they so choose. This rule would not require any contracting officer to make such a reservation. If a contracting officer chose not to reserve a specific order for 8(a) concerns (*e.g.,* if a contracting officer went to an 8(a) firm, a small business, and a large business off a schedule or otherwise competed an order among 8(a) and one or more non-8(a) concerns), the contracting officer

could continue to take SDB credit for the award of an order to an 8(a) firm.

Barriers to Acceptance and Release From the 8(a) BD Program

Current § 124.504(a) provides that SBA will not accept a procurement for award through the 8(a) BD program where a procuring activity has issued a solicitation for or otherwise expressed publicly a clear intent to reserve the procurement as a small business or SDB set-aside prior to offering the requirement to SBA for award as an 8(a) contract. This regulation was written prior to legislation authorizing HUBZone and service disabled veteran-owned (SDVO) small business contracts, either through set-asides or where appropriate on a sole source basis. As such, this rule proposes to add a provision limiting SBA's ability to accept a requirement for the 8(a) BD program where a procuring agency expresses a clear intent to make a HUBZone or SDVO small business award. In addition, the reference to SDB set-asides would be eliminated as that provision is no longer applicable.

This rule also proposes to amend § 124.504(e), regarding the release of follow-on procurements from the 8(a) BD program. It has always been SBA's policy, and implicit in the regulations, that once a requirement is awarded as an 8(a) contract, any follow-on procurement should generally also be awarded as an 8(a) contract. SBA's regulations for both the HUBZone and service disabled veteran-owned small business programs address the release of requirements from the 8(a) BD program to those programs where no 8(a) firm can currently perform the contract. The 8(a) BD regulations did not specifically address release of requirements other than those where a firm is graduating from the program and needs the follow-on contract to further its business development. As such, the proposed rule would require that follow-on or repetitive 8(a) procurements would generally remain in the 8(a) BD program unless SBA agrees to release them for non-8(a) competition. If a procuring agency would like to fulfill a follow-on or repetitive acquisition outside of the 8(a) BD program, it must make a written request to and receive the concurrence of the AA/BD to do so. Release may be based on an agency's achievement of its SDB goal, but failure to achieve its HUBZone or SDVO goal, where the requirement is not critical to the business development of the 8(a) Participant that is currently performing the requirement or another 8(a) BD Participant. The requirement that a follow-on procurement must be released from the 8(a) BD program in order for it to be fulfilled outside the 8(a) BD program would not apply to orders offered to and accepted for the 8(a) BD program pursuant to § 124.503(h).

Competitive Threshold Amounts

SBA is also proposing to amend § 124.506. That regulation addresses the dollar threshold for competing 8(a) procurements among eligible Participants and provides generally that a procurement offered and accepted for award through the 8(a) BD program must be competed among eligible Program Participants if the anticipated award price of the contract, including options, will exceed $5,000,000 for manufacturing contracts and $3,000,000 for all other contracts. In 2004, Congress passed new legislation requiring an inflationary adjustment of statutory acquisition-related dollar thresholds every five years. *See* 41 U.S.C. § 431a. On September 28, 2006, the Federal Acquisition Regulation (FAR) Council published in the **Federal Register** a final rule implementing 41 U.S.C. § 431a 71 Fed. Reg. 57363. With respect to the 8(a) BD competitive threshold, the final rule amended FAR § 19.805–1 by ''removing from paragraph (a)(2) '$5,000,000' and '$3,000,000' and adding '$5.5 million' and '$3.5 million', respectively, in their place.'' This rule would incorporate the FAR changes into SBA's regulations, so that the revised SBA regulation would also set the competitive threshold amounts at $5,500,000 and $3,500,000, respectively.

Based on statute, the regulation further provides an exemption from the competition requirement for 8(a) Participants owned and controlled by Indian tribes and Alaska Native Corporations (ANCs). Contracts may be awarded through the 8(a) BD program on a sole source basis to tribally or ANC-owned concerns above the competitive threshold amounts if the procuring agency believes the firm is responsible to perform the contract and SBA has not already accepted the requirement into the 8(a) program as a competitive procurement, and adverse impact analyses, as appropriate, have been conducted. *See* 13 CFR 124.506(b).

Historically, SBA has permitted sole source 8(a) contracts above the competitive threshold amounts both directly to 8(a) Participants owned and controlled by tribes or ANCs and to joint ventures with one or more tribally or ANC-owned 8(a) Participants. There have been complaints that non-8(a) firms have received substantial benefits through the performance of large sole source 8(a) contracts as joint venture partners with tribally-owned and ANC-owned 8(a) firms. The perception of impropriety has been even greater where the joint venture partner is a large business that performs a significant portion of the 8(a) contract. Under SBA's regulations, a joint venture between an 8(a) firm and any business that SBA has approved as the 8(a) firm's ''mentor'' is considered to be small for a particular contract opportunity if the 8(a) firm (*i.e.,* the protégé) qualifies as small for the size standard corresponding to the requirement. Thus, a joint venture between a large business mentor and an 8(a) protégé is considered to be a small business for any contract for which the protégé qualifies as small. This provision currently applies to all Government contracts, including sole source 8(a) contracts above the competitive threshold amounts where the protégé firm is a tribally-owned or ANC-owned concern.

In addition, pursuant to SBA's current regulations, where SBA approves a joint venture for a particular 8(a) contract, the joint venture, and not the individual 8(a) Participant(s), must meet the applicable performance of work requirement (*e.g.,* the joint venture as a whole must perform at least 50% of the contract), and the 8(a) Participant(s) must perform ''a significant portion'' of the contract. In the context of a joint venture between a tribally-owned or ANC-owned protégé and its large business mentor for a sole source contract above the competitive threshold amounts, there is a perception that large businesses may be unduly benefiting from the 8(a) program where the large business is performing a significant amount of work under the contract. This is particularly true where a large business mentor also acts as a subcontractor to the prime joint venture contractor in addition to its role as joint venture partner. In such a case, a joint venture between a protégé firm and its large business mentor could agree to perform 50% of the work through the joint venture entity (with the 8(a) protégé firm performing close to half of that work) and then subcontract the remaining 50% to the large business mentor in its individual capacity. In this scenario, a large business would be performing 70–80% of a large 8(a) contract, while the protégé firm would be performing somewhere in the 20–30% range of the contract. Even though that 20–30% could be a significant amount of work for a developing protégé firm, SBA does not believe that it is appropriate for a large business to benefit to such an extent through an 8(a) contract, particularly where that

contract is awarded on a sole source basis.

SBA recognizes that the mentor/protégé aspect of the 8(a) BD program can be an important component to the overall business development of 8(a) small businesses. However, SBA does not believe that non-8(a) businesses, particularly non-8(a) large businesses, should benefit more from an 8(a) contract than 8(a) protégé firms themselves. As such, this rule proposes that non-8(a) joint venture partners to 8(a) sole source contracts cannot also be subcontractors under the joint venture prime contract. If a non-8(a) joint venture partner seeks to perform more work under the contract, then the amount of work done by the 8(a) partner to the joint venture must also increase. Because of the proposed change to § 124.513(d) contained in this rule (which would require the 8(a) partner(s) to a joint venture to perform at least 40% of the work performed by the joint venture), the additional amount of work required to be performed by the 8(a) partner(s) to a joint venture would be spelled out.

The proposed change to disallow subcontracts to non-8(a) joint venture partners is not meant to penalize tribal and ANC 8(a) firms, but, rather, to ensure that the benefits of the program flow to its intended beneficiaries. SBA consulted with ANC and tribal groups, both informally and formally, in drafting this proposal. These groups felt that both the 8(a) program generally and tribal and ANC-owned Participants in particular had received unfair criticism, but understood the negative perception surrounding the performance of 8(a) contracts where the majority of the contract is ultimately performed by a non-8(a), large business. While they supported some change to eliminate abuse in the program, they felt strongly that the mentor/protégé joint venture program served an important function. They believed that protégé firms gained invaluable developmental assistance through this program and did not want to see it unduly restricted or eliminated. SBA considered several other alternatives to this proposal, including eliminating joint ventures on sole source awards above the competitive threshold amounts, requiring a majority of subcontract dollars under a sole source 8(a) joint venture contract between a protégé firm and its mentor to be performed by small businesses, and allowing sole source joint venture contracts above the competitive threshold amounts only where the 8(a) partner(s) to the joint venture performed a specified percent (*e.g.,* 40%) of the entire contract itself. SBA has attempted to address the perceived abuse without unduly limiting this important business development tool. SBA specifically requests comments on how best to limit sole source awards to ensure that program benefits flow to the intended beneficiaries, including comments on each of the three identified alternatives. SBA also requests comments on whether it should extend the prohibition against non-8(a) joint venture partners from also being subcontractors under the joint venture prime contract beyond sole source contracts and whether it should be applied to all 8(a) contracts awarded to any joint venture.

SBA proposes to further amend § 124.506(b) to implement a provision contained in § 8021 of the Department of Defense (DoD) appropriations act for fiscal year (FY) 2004. That provision gave DoD agencies the authority to make sole source awards for 8(a) contracts above the competitive threshold amounts to 8(a) concerns owned and controlled by Native Hawaiian Organizations (NHOs). *See* Public Law 108–87, 117 Stat. 1054. However, the statute limited the exemption to contracts issued by DoD. This authority was initially tied to specific appropriations, and hence limited in duration. The words ''and hereafter'' were included in Section 8020 of the DoD Emergency Supplemental Appropriation to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006, Pub. L. 109–148, 119 Stat. 2680, 2702, making this authority permanent. The proposed addition to § 124.506(b) implements the statutory authority.

Bona Fide Place of Business

The proposed rule would also amend the bona fide place of business requirements set forth in § 124.507. Certain 8(a) contracts are restricted to 8(a) Participants having a ''bona fide place of business'' within a particular geographic location. There has been some confusion regarding the procedures a Participant must follow to establish a bona fide place of business in a new location. This rule clarifies that a Participant must first submit its request to be recognized as having a bona fide place of business in a different location to the SBA district office that normally services it. This will ensure that there is proper coordination between the two SBA district offices. The servicing district office will forward the request to the SBA district office serving the geographic area of the particular location for processing. The SBA district office in the geographic location of the purported bona fide place of business will then contact the Participant and may ask for further information in support of the Participant's claim. In order for a Participant to establish a bona fide place of business in a particular geographic location, the SBA district office serving the geographic area of that location must determine if that location in fact qualifies as a bona fide place of business under SBA's requirements. A Participant cannot submit an offer for an 8(a) procurement limited to a specific geographic area unless it has received from SBA a determination that it has a bona fide place of business within that area. In other words, eligibility in terms of having a bona fide place of business in a particular geographic location will be determined at the time a Participant submits its offer. This coincides with the time at which size status is determined.

Competitive Business Mix

Section 124.509(a)(1) would also be amended to clarify that work performed by an 8(a) Participant for any Federal department or agency other than through an 8(a) contract, including work performed on orders under the General Services Administration (GSA) Multiple Award Schedule program, and work performed as a subcontractor, including work performed as a subcontractor to another 8(a) Participant on an 8(a) contract, qualifies as work performed outside the 8(a) BD program. Several 8(a) Participants specifically questioned whether orders off the GSA Schedule and subcontracts on 8(a) contracts counted against their competitive business mix requirement. SBA believes that the current regulation clearly provides that only 8(a) contract awards count against a Participant's competitive business mix. Nevertheless, to avoid any confusion, SBA has clarified that all Federal contracts other than 8(a) contracts, and any subcontract to a Federal contract, including a subcontract to an 8(a) contract, do not count against the firm's competitive business mix. Such revenue is not an 8(a) award to the Participant and, thus, cannot act to limit further sole source 8(a) awards.

Administration of 8(a) Contracts

The proposed rule would also add clarifying language to § 124.512. Administration of 8(a) contracts has been delegated to procuring agencies. The current regulation specifies that the procuring activity is accountable for ''all responsibilities for administering an 8(a) contract.'' Despite this broad language, the Government Accountability Office (GAO) and others have asked what role

SBA plays in tracking whether an 8(a) firm has met the performance of work requirements set forth in § 124.510 throughout the life of an 8(a) contract. As part of contract administration, compliance with the performance of work requirements is a responsibility of the procuring activity. While SBA believed that was clear from the current broad regulatory language, the proposed rule would specifically recognize that tracking compliance with the performance of work requirements is a contract administration function which is performed by the procuring activity. Also included within the delegation of contract administration is the authority to exercise priced options and issue appropriate modifications. The regulation has required contracting officers who issued modifications or exercised options on 8(a) contracts to notify SBA of these actions. Because there was no clear guidance as to when SBA must be notified, there was often a delay between the issuance of a modification (or exercise of an option) and notification being supplied to SBA. This proposal would require contracting officers to submit copies of modifications and options to SBA within 10 days of their issuance or exercise. If SBA has a question regarding whether a particular 8(a) contractor has complied with applicable regulatory requirements, the proposed rule would specifically authorize SBA to review the procuring activity's 8(a) contracting files.

Changes to Joint Venture Requirements

This rule would also amend § 124.513(c)(3) to provide that the 8(a) Participant(s) to an 8(a) joint venture must receive profits from the joint venture commensurate with the work performed by the 8(a) Participant(s). Currently, SBA's regulations provide that the 8(a) Participant(s) must receive at least 51% of the net profits of the joint venture. SBA believes that such a requirement may be untenable where more work is done by a non-8(a) joint venture partner than the 8(a) Participant partner(s). Under current regulations, the joint venture must perform at least 50% of an 8(a) contract and the 8(a) Participants must perform a significant portion of the amount performed by the joint venture. If, for example, a joint venture will perform 60% of an 8(a) contract, with the 8(a) partner performing 25% of the contract and the non-8(a) partner performing 35% of the contract, it does not make sense that the 8(a) partner should receive at least 51% of the net profits of the joint venture where it is performing less than the non-8(a) firm on the contract. SBA understands the concern that 8(a) firms should receive their fair share of the profits from such a joint venture, and believes that profits commensurate with the work performed should ensure this result.

SBA also proposes to amend the requirement setting forth the amount of work that an 8(a) Participant must perform as part of a joint venture. Sections 124.510 and 125.6 of SBA's regulations require that the 8(a) Participant being awarded an 8(a) contract must perform a specific amount of work on the contract (generally at least 50%). For a joint venture on an 8(a) contract, § 124.513(d) requires that the joint venture perform the applicable percentage of work set forth in § 124.510 and that the 8(a) Participant(s) to the joint venture must perform a ''significant portion'' of the contract. The term ''significant portion'' was not defined in SBA's regulations. As such, various procuring agencies and SBA field offices interpreted this requirement differently. This rule proposes to impose a more objective requirement. Specifically, the rule proposes that the 8(a) Participant(s) to a joint venture for an 8(a) contract must perform at least 40% of the work done by the joint venture. So, for example, if the joint venture proposes to perform 50% of the contract, the 8(a) Participant(s) must perform at least 40% of the 50% or at least 20% of the entire contract.

The proposed rule would also add a new paragraph 124.513(i) to require 8(a) firms that joint venture to perform an 8(a) contract to report on contract performance at the conclusion of the contract. Specifically, each 8(a) firm that performs an 8(a) contract through a joint venture would be required to report to SBA how the performance of work requirements (*i.e.,* that the joint venture performed at least 50% of the work of the contract and that the 8(a) participant to the joint venture performed at least 40% of the work done by the joint venture) were met on the contract. This requirement is needed to reinforce the performance of work requirements. Several audits performed by SBA's Office of Inspector General have revealed that the performance of work requirements are not always met. SBA needs to know when and why the requirements are not met. This could affect the firm's future responsibility to perform additional contracts and, depending upon the circumstance, could be cause for termination from the 8(a) BD program.

Sole Source Limits for NHO-Owned Concerns

SBA proposes to amend § 124.519, which imposes limits to the amount of 8(a) contract dollars a Participant may receive on a sole source basis. The current rule exempts ANC and tribally owned concerns from the limitations set forth in the rule. The amendment would add NHO-owned concerns to the list of 8(a) concerns exempted from the limitations. SBA believes that all three of these types of firms should be treated consistently, and the failure to include NHO-owned concerns in the exemption in the current regulation was an inadvertent omission. The proposed rule would also change the SBA official authorized to waive the requirement prohibiting a Participant from receiving sole source 8(a) contracts in excess of the dollar amount set forth in § 124.519. Under the current regulations, only the SBA Administrator, on a non-delegable basis, may grant such a waiver. SBA believes that such waivers have been requested and acted on sparingly because of the high level approval required. While SBA continues to believe that such waivers should not be commonplace, SBA does believe that a change from the Administrator to the AA/BD is warranted in order to facilitate waivers where appropriate.

Changes to Mentor/Protégé Program

The proposed rule would make several changes to § 124.520, governing SBA's mentor/protégé program. The rule would specifically require that assistance to be provided through a mentor/protégé relationship be tied to the protégé firm's SBA-approved business plan. Although SBA believed that this was implicit in the current regulations, SBA feels that it is important to reinforce that the mentor/protégé program is but one tool that can be used to help the business development of 8(a) Participants in accordance with their business plans.

Section 125.520(b)(2) would be amended to provide for an absolute limit of three protégés per mentor. SBA is proposing this rule to prevent mentor firms from being able to take advantage of the program by collecting protégés in order to benefit from 8(a) contracts. SBA is interested in hearing from the public on this proposed limitation. In addition, § 124.520(b)(3) would be amended to allow a firm seeking to be a mentor to submit Federal income tax returns or audited financial statements, including any notes, or other evidence from the mentor in order to demonstrate the firm's favorable financial health. The current regulation requires the

submission of Federal tax returns only. SBA believes that it may be unnecessary in all cases to require the Federal tax returns of the proposed mentor, provided the firm submits audited financial statements, including any notes, or in the case of publicly traded concerns the filings required by the Securities and Exchange Commission (SEC) for the past three years, or other relevant documentation to SBA for review. SBA's concern is to ensure that the firm seeking to be a mentor evidences its financial wherewithal.

SBA is also considering amending who may be a mentor under the 8(a) BD mentor/protégé program. SBA's current regulation states that a mentor can be ''[a]ny concern that demonstrates a commitment and the ability to assist developing 8(a) Participants * * *'' Section 121.105 of SBA's size regulations defines the word ''concern'' to be a for profit entity. As such, non-profit businesses have not been eligible to be mentors under the mentor/protégé program. SBA is considering making a change to § 124.520(b) to specifically allow non-profit business entities to be mentors, and seeks public comment on this issue.

Section 124.520(c)(1) would be amended for clarity purposes. There appears to be some confusion regarding the use of the conjunction ''or'' at the end of paragraph (ii) in SBA's current regulation. Some have questioned whether the current regulation requires a firm to be in the developmental stage of program participation in all instances and either have never received an 8(a) contract or have half the applicable size standard. That was not SBA's intent. The intent of the 8(a) mentor/protégé program is to assist Participants that are in the early stages of the 8(a) BD program (*i.e.,* thus, paragraph (i) allows any firm in the developmental stage of program participation to be a protégé) or need additional assistance in their business development (*i.e.,* paragraphs (ii) and (iii) allow a firm that has never received an 8(a) contract or one that has a size standard that is less than half the size standard corresponding to its primary NAICS code to be a protégé, respectively). A firm that has never received an 8(a) contract or has a size standard less than half the size standard corresponding to its primary NAICS code may need developmental assistance regardless of the number of years it has spent in the 8(a) BD program. In fact, a firm that is in the transitional stage of program participation that has never received an 8(a) contract may very well need greater assistance than a similar firm in the developmental stage of program participation. Thus, the regulation would be amended to make clear that a firm may qualify as a protégé if it is in the developmental stage of program participation, or has never received an 8(a) contract, or has a size standard that is less than half the size standard corresponding to its primary NAICS code.

This rule would also add clarifying language to § 124.520(c)(2) to make it clear that the benefits derived from the mentor/protégé relationship end once the protégé firm graduates from or otherwise leaves the 8(a) BD program. While this is implicit in the current regulations which provide that ''[o]nly firms that are in good standing in the 8(a) BD program * * * may qualify as a protégé,'' SBA wanted to specifically make clear that the exclusion from affiliation enjoyed by joint ventures between protégés and their mentors generally ends when the protégé leaves the 8(a) BD program. Of course, a joint venture between a mentor and protégé would be expected to complete any contract awarded to the joint venture while the protégé was a Participant in the 8(a) BD program and a contracting officer could continue to count such contract as an award to an 8(a) or small business concern, as the case may be.

Section 124.520(c)(3) currently provides that a protégé firm can have only one mentor. As part of SBA's tribal consultation under Executive Order 13175, Consultation and Coordination with Tribal Governments, SBA received comments that this provision was too restrictive, not just for tribally owned 8(a) firms, but for all 8(a) firms. While SBA continues to believe that the norm should continue to be one mentor for any given protégé firm, SBA concedes that there may be unusual circumstances where a second mentor/protégé relationship is warranted. This proposed rule would allow the AA/BD to approve a second mentor for a protégé firm in limited circumstances. Specifically, a second mentor may be approved where the protégé firm demonstrates that the second relationship pertains to an unrelated, secondary NAICS code, the first mentor does not possess the specific expertise that is the subject of the mentor/protégé agreement with the second mentor, and the two relationships will not compete or otherwise conflict with each other.

Section 124.520 would also be amended to preclude 8(a) firms from being mentors and protégés at the same time. The amendment would provide that an 8(a) concern must give up its status as a protégé if it becomes a mentor. SBA believes that if an 8(a) concern has the expertise and experience to be a mentor, it no longer has the need for a mentor itself. This amendment is intended to reduce the risks of questionable mentor/protégé relationships entered into solely to enable mentors to take advantage of 8(a) contracts.

The proposed rule would also add a new § 124.520(c)(5), which would prohibit SBA from approving a mentor/protégé agreement if the proposed protégé firm has less than one year remaining in its program term. Recently, SBA received a request to approve a mentor/protégé agreement for a firm whose program term was ending within weeks. It appeared that the real reason that the mentor/protégé relationship was proposed was to pursue a particular 8(a) contract for which the protégé sought to joint venture with the proposed mentor. With the firm's program term and SBA's oversight of the firm ending, there was no assurance that the protégé firm would ever receive the business development assistance identified in the mentor/protégé agreement. In such a case, the mentor/protégé relationship becomes more of a convenient contracting tool (by which the mentor can largely benefit) than a business development tool. To ensure that protégé firms actually receive identified business development assistance, SBA is proposing not to approve any mentor/protégé agreement where the proposed protégé has less than one year remaining on its program term. SBA asks for comments as to what the appropriate length of time before the end of a firm's program term should be for SBA not to permit new mentor/protégé agreements (*e.g.,* 6 months, 9 months, 1 year, 18 months).

The proposed rule would amend § 124.520(d)(1) to allow a joint venture between a mentor and protégé to be small for Federal subcontracts. A similar change would also be made to § 121.103(h)(3)(iii) of SBA's size regulations to ensure consistent implementation throughout SBA's regulations. Currently, SBA's regulations permit such a joint venture to be small for any ''government procurement.'' This provision has been interpreted as applying solely to Federal prime contracts. SBA believes that if this benefit applies to all Federal contracts it should also be available with respect to subcontracts. SBA believes that the current interpretation is particularly onerous for the Department of Energy (DOE), which has a significant amount of contracting activity go through government owned contractor operated (GOCO) facilities, and the contracts between the GOCO and a contractor technically are

government subcontracts for which the exclusion from affiliation for a mentor/protégé joint venture do not apply. SBA initially considered allowing mentor/protégé joint ventures to qualify as small businesses only for DOE subcontracts, but felt that the business development afforded to protégés would be beneficial government-wide. SBA specifically requests comments on both the proposed language and a provision which would limit its applicability solely to DOE subcontracts. SBA also understands concerns raised with applying the exclusion from affiliation for mentor/protégé joint ventures to contracts that are not Federal contracts and seeks input as to whether an extension of the affiliation exclusion is appropriate. In addition, as mentioned in the supplementary information regarding changes to § 121.103(h)(3), SBA is also considering allowing an exclusion to affiliation only for mentor/protégé joint ventures for 8(a) contracts. SBA specifically requests comments on such a proposal.

SBA also proposes to clarify that if a mentor and a protégé joint venture on a procurement, in order to take advantage of the special exception to the size requirements for that procurement, the mentor/protégé agreement must be approved by SBA prior to the submission of the bid or offer on the procurement. One of the benefits of the mentor/protégé relationship is that mentors and protégés are permitted to joint venture on 8(a) procurements and procurements set aside for small business as long as the protégé qualifies as small for the procurement. This change clarifies that the mentors and protégés may take advantage of this size advantage only if the mentor/protégé agreement is approved by SBA prior to the submission of the bid or offer on the procurement. Although this is the current practice, SBA felt it was useful to make this practice clear in its regulations, as some companies have mistakenly assumed that, like joint ventures between mentors and protégés on 8(a) procurements, a mentor/protégé agreement could be approved after submission of an offer as long as it was approved prior to the date of award. This is not the case. Joint ventures are tied to procurements and often there is insufficient time to obtain SBA's approval between the issuance of a solicitation and the submission of an offer. Therefore, SBA has permitted joint ventures to be approved on 8(a) procurements after the submission of offers, as long as the approval takes place prior to the actual award. Unlike joint ventures, mentor/protégé agreements should not be specifically connected with procurements. Size benefits for purposes of joint ventures are a benefit of engaging in a mentor/protégé agreement, not the reason for the relationship. Therefore, there are no strict time limitations at issue. Because it is possible that SBA might not approve a mentor/protégé agreement in a given situation, it believes that it is important that approval occur prior to a joint venture's submission of its bid or offer.

Under SBA's size regulations, size is determined at a fixed point in time (*i.e.,* as of the date of the initial offer, including price). *See* 13 CFR 121.504. If the entity submitting an offer is small as of that date, it will qualify as small for the procurement even if it grows to be other than small at the date of award. If the entity submitting an offer does not qualify as small as of the date it submits its initial offer, it cannot later come into compliance and qualify as small for that procurement. Thus, in order for a joint venture to be eligible as a small business, it must be small at the time it submits its offer including price. Generally, the revenues or employees of joint venture partners are aggregated when determining whether a joint venture qualifies as small. However, where there is an SBA-approved 8(a) mentor/protégé relationship, the receipts or revenues of the two joint venture partners are not aggregated. In such a case, size for the joint venture depends on the size of the protégé firm by itself. It seems obvious to SBA that if SBA has not yet approved a mentor/protégé agreement, a joint venture between proposed protégé and mentor firms is not entitled to receive the benefits of the 8(a) mentor/protégé program, including the exclusion from affiliation.

In addition, the proposed rule would add a provision making it clear that in order to receive the exclusion from affiliation for both 8(a) and non-8(a) procurements, the joint venture must comply with the requirements set forth in § 124.513(a). This has been SBA policy, but may not have been as clearly identified as SBA had hoped. There never has been any doubt or confusion as to the application of § 124.513(a) to 8(a) contracts. Unfortunately, not all contracting officers and 8(a) Participants understood that the § 124.513(a) joint venture requirements applied to non-8(a) contracts as well. It is SBA's view that in order to obtain a benefit derived from the 8(a) program (*i.e.,* the exclusion from affiliation for joint ventures between approved protégés and mentors), the same restrictions that are applicable to 8(a) contracts apply to non-8(a) contracts. For example, the performance of work requirement (*i.e.,* 50% rule) applies equally to small business set-aside and 8(a) contracts. SBA believes that it would not make sense for the requirement that the protégé firm perform a ''significant portion'' of the procurement not apply to small business set-aside contracts. The whole purpose of the mentor/protégé program is to help protégé firms develop so that they can better compete for future contracts on their own. If they are not required to perform a significant portion of or be the project manager on a contract, the development purposes of the mentor/protégé program would not be served.

The proposed rule would also clarify procedures for requesting reconsideration of SBA's decision to deny a proposed mentor/protégé agreement. Where SBA declines to approve a specific mentor/protégé agreement, the protégé may request the AA/BD to reconsider the Agency's initial decline decision by filing a request for reconsideration with its servicing SBA district office within 45 calendar days of receiving notice that its mentor/protégé agreement was declined. The protégé should revise its mentor/protégé agreement to more fully detail the business development assistance that the mentor will provide and provide any additional information and documentation pertinent to overcoming the reason(s) for the initial decline. If the AA/BD declines to approve the mentor/protégé agreement on reconsideration, the 8(a) firm seeking to become a protégé could not submit a new mentor/protégé agreement with that same mentor for one year. It may, however, submit a proposed mentor/protégé agreement with a different proposed mentor at any time after the SBA's final decline decision.

The rule also proposes to add a new § 124.520(h) which would set forth consequences for a mentor that fails to provide the assistance it agreed to provide in its mentor/protégé agreement. This recommendation was also received in response to SBA's tribal consultations to ensure that protégé firms do obtain beneficial business development assistance through their mentor/protégé relationships. Under the proposal, where SBA determines that a mentor has not provided to the protégé firm the business development assistance set forth in its mentor/protégé agreement, SBA will afford the mentor an opportunity to respond. The response must explain why the assistance set forth in the mentor/protégé agreement has not been provided to date and must set forth a

definitive plan as to when it will provide such assistance. If the mentor fails to respond, does not supply adequate reasons for its failure to provide the agreed upon assistance, or does not set forth a definite plan to provide the assistance SBA will recommend to the relevant procuring agency to issue a stop work order for each Federal contract for which the mentor and protégé are performing as a small business joint venture and received the exclusion from affiliation authorized by § 124.520(d)(1). The stop work order could be withdrawn when SBA is satisfied that the assistance has been or will be provided to the protégé. If the work is critical to and any delay in contract performance would harm the procuring activity, SBA may request that another Participant be substituted for the joint venture to continue performance. Where SBA terminates a mentor/protégé agreement because the mentor has failed to provide the agreed upon developmental assistance, the firm would be ineligible to again act as a mentor for a period of two years from the date SBA terminates the mentor/protégé agreement. If SBA believes that the mentor entered into the mentor/protégé relationship solely to obtain one or more Federal contracts as a joint venture partner with the protégé and had no intent to provide developmental assistance to the protégé, SBA could initiate proceedings to debar the mentor from Federal contracting. Similarly, if SBA believes that a protégé firm entered a mentor/protégé agreement in order to be awarded joint venture contracts with its mentor knowing that it would bring little or no value to the joint venture, SBA could initiate proceedings to terminate the firm from 8(a) participation or debar the firm from Federal contracting.

Reporting Requirement and Submission of Financial Statements

The proposed rule would also amend § 124.601, which addresses a statutorily required reporting requirement for 8(a) Participants. Small business concerns participating in the 8(a) BD program are required by statute to semiannually submit a written report to their assigned BDS that includes a listing of any agents, representatives, attorneys, accountants, consultants and other parties (other than employees) receiving fees, commissions, or compensation of any kind to assist such participant in obtaining a Federal contract. The listing must indicate the amount of compensation paid and a description of the activities performed for such compensation. The current regulation incorrectly required this report to be submitted annually. This change is needed in order to bring the regulation into compliance with the statutory requirement.

The proposed rule would also amend § 124.602 regarding the submission of audited and reviewed financial statements. As the cost for audited and reviewed financial statements increases, those costs are becoming more of a burden on developing disadvantaged small businesses. As such, SBA believes that audited financial statements should be required only for larger firms. SBA proposes to raise the level above which audited financial statements are required from Participants with gross annual receipts of more than $5,000,000 to Participants with gross annual receipts of more than $10,000,000. Reviewed financial statements would be required of all Participants with gross annual receipts between $2,000,000 and $10,000,000, instead of between $1,000,000 and $5,000,000. SBA requests comments as to whether these levels are appropriate. Specifically, SBA considered changing the level above which audited financial statements are required to Participants with gross annual receipts in excess of $6,000,000 or $7,500,000, and requests comments on those alternatives vis a vis the $10,000,000 level contained in the proposed rule.

Requirements Relating to SDBs

Finally, SBA is proposing to amend § 124.1002, which defines what is an SDB. SBA first proposes to add a provision to § 124.1002(d) to make it clear that the ''other eligibility requirements'' set forth in § 124.108 for 8(a) BD program participation do not apply to SDBs. As part of an SDB protest, SBA would merely be determining whether a concern is owned and controlled by one or more individuals who qualify as socially and economically disadvantaged. SBA would not consider whether the concern is a responsible business for the particular contract. As such, issues such as good character and failure to pay Federal financial obligations should not be part of SBA's determination as to whether a firm qualifies as an SDB. If a firm does not have good character, for example, a procuring agency should take that into account as an issue of responsibility prior to contract award.

SBA is also proposing to add a new paragraph to § 124.1002 to define full time management as it applies to the SDB program. Since the SDB program is a contracts program and not a business development program, and since there is no good policy reason to exclude part-time companies from the SDB program, SBA proposes to permit SDB owners to devote fewer than 40 hours per week to their SDB firms provided that the disadvantaged manager works for the firm during all the hours that the firm operates. For example, if a firm is only in operation 20 hours per week, the disadvantaged manager of the firm would be considered to devote full time to the firm if the individual was available and working for the firm during the 20 hours the firm was operating. This definition is not being extended to 8(a) firms as those firms are expected to operate 40 or more hours per week. SBA is interested in the public's comments on this proposed change.

Compliance with Executive Orders 12866, 12988, 13175, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C., Ch. 35).

Executive Order 12866

The Office of Management and Budget (OMB) has determined that based on the revision to § 124.506(b)(4), this rule constitutes a significant regulatory action for purposes of Executive Order 12866, and as a result a regulatory impact analysis is required.

Regulatory Impact Analysis

Is there a need for the regulation action?

As stated above, the revision to § 124.506 would limit the amount of work that a non-8(a) business, particularly a non-8(a) large business in the context of a mentor/protégé relationship, could perform on an 8(a) sole source contract above the competitive threshold amounts. Specifically, a joint venture between a tribally or ANC-owned concern and a non-8(a) business concern could be awarded a sole source contract above the applicable competitive threshold amount only where the non-8(a) joint venture partner does not receive any work on the contract as a subcontract to the joint venture prime contractor.

SBA believes this rule is needed to prevent large businesses as well as other non-8(a) firms from being able to reap the benefits of sole source contracts intended for tribally-owned or ANC-owned 8(a) Participants. When these large contracts are awarded on a sole source basis to joint ventures, the contracts are not available for competition among other 8(a) firms. Thus, large firms and other non-8(a) firms joint venturing with tribally owned or ANC owned firms are realizing the benefits of sole source 8(a) contracts to the detriment of 8(a) firms who might otherwise compete for these

contracts. This is particularly true when the non-8(a) joint venture partner is also a subcontractor on the same 8(a) contract. In such a case, a non-8(a) concern could conceivably be performing 70–80% of the entire contract. SBA believes that such an outcome should not be possible under the 8(a) program.

Other proposed changes in this rule are needed to clarify SBA's requirements and remove confusion. For example, the proposed change to § 121.103(h) to permit a specific joint venture to be formed for three contract awards over a two-year period, instead of an entity that can seek three contract opportunities over a two-year period, is proposed because the current requirement has caused confusion and resulted in some firms being ineligible for certain small business awards due to that confusion. Similarly, the proposed change to § 124.104(c)(2) to exempt income from an S corporation from the calculation of both the individual owner's income and net worth to the extent such income is reinvested in the firm or used to pay corporate taxes is designed to treat an individual owner of an S corporation the same as an individual owner of a C corporation. The current rule has caused confusion as to whether such income should be included in an individual's income or net worth for purposes of determining economic disadvantage.

Finally, several changes in this rule are being proposed to eliminate or ease restrictions that SBA believes are unnecessary. For example, the proposed change to § 124.105(g) would provide more flexibility in determining whether to admit to the 8(a) program companies owned by individuals where such individuals have immediate family members who are owners of current or former 8(a) concerns. SBA believes that the current rule, which broadly prohibits such ownership, is too strict and needs to be revised to recognize separate business ownership in more than one immediate family member. In addition, SBA believes that the proposed change to § 124.104(c)(2) to exempt funds in Individual Retirement Accounts (IRAs) and other official retirement accounts from the calculation of an individual's net worth in determining his or her economic disadvantage is needed so that those individuals who have wisely invested in retirement accounts should not be penalized.

What are the potential benefits and costs of this regulatory action?

During the past five years, an estimated 62 joint ventures between tribally owned or ANC-owned firms and firms which are not tribally owned or ANC owned were awarded contracts above the competitive threshold amounts based on the current application of the statutory exception. The dollar amounts of these contracts ranged from $3 million to $600 million and the total contract dollars awarded was approximately $2.5 billion. It is estimated based on past experience that each joint venture partner performs approximately one half of the contract awarded the joint venture, with the 8(a) concern performing slightly more based on regulatory requirements that more than half the profits from the contract be distributed to the 8(a) firm. *See* 13 CFR 124.513(c)(3). Thus, under this assumption, in the past five years an estimated $1.25 billion has been awarded to firms that are not tribally-owned or ANC-owned as a result of the current regulatory scheme and approximately $1.25 billion was awarded to tribally or ANC-owned firms. (Contracts awarded to joint ventures between tribally owned concerns and other tribally owned concerns were not counted as these contracts would still be allowed under the proposed rule.) Under the above assumptions and based on the data compiled approximately $500 million (approximately half of 25 contracts) went to large businesses and $750 million (approximately half of 37 contracts) went to small businesses not tribally or ANC-owned. We also believe that a significant percentage of non-8(a) joint venture partners also acted as subcontractors on the same 8(a) contracts for which they were joint venturers. If non-8(a) joint venture partners can no longer act as subcontractors, the only way for them to perform additional work on an 8(a) contract is to increase the percentage of work performed by the joint venture. This will necessarily have the beneficial effect of increasing the amount of work performed by tribally and ANC-owned 8(a) firms. This change, in concert with the change to require the 8(a) partner(s) to a joint venture on an 8(a) contract to perform at least 40% of the work performed by the joint venture, should enable 8(a) joint venture partners to perform not only more work, but more meaningful work on 8(a) joint venture contracts.

If this change dissuades large mentors from participating as joint venture partners with tribally or ANC-owned firms on sole source 8(a) contracts, many of these contracts may not be offered to the 8(a) program at all. These contracts would then be either competed among all small businesses, or competed among all firms on an unrestricted basis.

It is difficult to estimate the costs and benefits to the various classes of firms as it is impossible to foresee which future contracts above the competitive thresholds would be awarded based on the various options (sole source to tribally-owned or ANC-owned firms, competition among 8(a) firms, competition among small businesses, unrestricted competition). It is likely that large firms and firms not in the 8(a) program will get smaller proportionate shares of these contracts; however, we note that Congress clearly intended the exception from the competition requirements to be for the benefit of ANC-owned and tribally-owned firms and not to large and non-8(a) firms. Therefore, any impact on large or non-8(a) firms is of little consequence for purposes of this rule. The benefits to large and non-8(a) firms are incidental to the purpose of the rule and are arguably at the expense of other 8(a) firms.

Although ANC-owned and tribally-owned 8(a) firms may receive fewer contract dollars if mentors are dissuaded from participating as joint venture partners under the proposed rule, we note that those firms will nevertheless be permitted to bid on all the contracts that are no longer available to them on a sole source basis as joint venture partners. We also note that these firms may still be awarded these contracts as prime contractors bidding alone or as joint venture partners with other tribally or ANC-owned firms, and that such firms will still be able to subcontract substantial portions of the contracts to other non-8(a) firms. We also reference the recent report issued by the GAO entitled ''CONTRACT MANAGEMENT Increased Use of Alaska Native Corporations' Special 8(a) Provisions Calls for Tailored Oversight'', GAO–06–399, April 2006 (''GAO Report''). That report noted that 8(a) obligations to firms owned by ANCs increased from $265 million in FY 2000 to $1.1 billion in 2004 and that in FY 2004, obligations to ANC firms represented 13 percent of total 8(a) dollars (GAO Report, p. 6). This sharp increase in 8(a) dollars awarded to ANC firms from 2000 to 2004 draws into question the need for such firms to utilize joint venture vehicles to take advantage of 8(a) sole source opportunities above the competitive threshold amounts.

Finally, SBA notes that the rule requiring the 8(a) member of a joint venture to receive the majority of the joint venture's profits is easily

manipulated and difficult to monitor. Thus, it would not be difficult for a joint venture to manipulate its numbers so that less than 51 percent of the actual profits from a contract in fact go to the tribally-owned or ANC-owned 8(a) concern. On the other hand, performance of work is more easily measured and thus easier to monitor. If a contract is awarded to an ANC-owned or tribally-owned firm and more than the allowed percentage is subcontracted, this fact is more difficult to hide and easier to track. Therefore, it is expected that instances of abuse and the use of fronts will decrease as a result of the proposed change.

For all of the reasons listed above, SBA believes that the benefits of the proposed rule far exceed its costs and far exceed the benefits of continuing the status quo.

Regarding other proposed changes set forth in this rule, SBA believes that increased clarity and easing of restrictions is overall beneficial to 8(a) applicants and Participants.

Alternatives to the Regulatory Action

SBA has considered a number of alternatives to the proposed rule and is interested in hearing from the public concerning these alternatives. One alternative SBA has considered is to continue to allow joint ventures on contracts above the competitive thresholds between ANC or tribally-owned concerns and other concerns with the condition that the ANC or tribally owned concern be required to meet the performance of work requirements set forth in 13 CFR 124.510 with its own workforce. *Also see* 13 125.6. Section 13 CFR 124.510 requires a prime contractor on an 8(a) contract to perform certain percentages of work with its own workforce (50 percent for service and manufacturing contracts, 15 percent for general construction and 25 percent for special trades). Another alternative being considered is to permit joint ventures above the threshold amounts with other 8(a) concerns or with other small businesses, but not with large businesses. Finally, SBA also considered disallowing any joint ventures on 8(a) sole source contracts above the competitive threshold amounts. Under this approach, ANC and tribally-owned Participants could still receive 8(a) sole source contracts above the competitive threshold amounts, they just could not perform those contracts through a joint venture. This would force ANC and tribally-owned Participants to be the prime contractor and meet the performance of work (*i.e.,* 50%) requirement with their own workforce. The first alternative is not being proposed because of the difficulty of enforcing the performance of work requirements. It is not clear whether a firm is meeting the required percentages of work requirements until the firm (or joint venture) is well along in the performance of the contract. It is difficult to enforce these provisions at this point and often the only recourse if the requirements are not met is to terminate the contract, a solution that creates numerous problems for the procuring activity. The second alternative is not being proposed at this time because it would still result in granting a significant portion of an 8(a) contract to a non-8(a) concern. Finally, the elimination of all joint ventures above the competitive thresholds approach is not being proposed because SBA was persuaded by tribal and ANC representatives that joint ventures serve an important function in the overall business development of ANC and tribally-owned Participants.

SBA is very interested in comments from the public on these issues.

Executive Order 12988

This action meets applicable standards set forth in Sec. 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132, Federalism. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism Assessment.

Executive Order 13175, Tribal Summary Impact Statement

For the purposes of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, the SBA's General Counsel has determined that the requirements of this order have been met in a meaningful and timely manner. This rule complies with the standards set forth in the Executive Order and SBA has provided the tribal officials with an opportunity to provide meaningful and timely input on regulatory policies that have tribal implications.

In drafting this proposed rule, SBA consulted with representatives of Alaska Native Corporations (ANCs) and Indian tribes, both informally and formally, pursuant to Executive Order 13175, primarily to discuss potential changes to the mentor/protégé requirements. SBA met informally with tribal and ANC representatives in Washington, DC on July 19, 2007, and more formally in Fairbanks, Alaska on October 24, 2007, 72 FR 57889, and in Denver, Colorado on November 11, 2007, 72 FR 60702. A vast majority of the comments received from these discussions were concerned that SBA would overreact to negative publicity regarding one or two 8(a) Participants and would change the mentor/protégé program in a way that would take away an important business development tool to tribal and ANC-owned firms. Tribal representative after tribal representative talked about the importance of the 8(a) BD program to the tribal and ANC communities. They stressed that the 8(a) BD program works, providing the government with a contracting option that is efficient and cost effective while permitting the government to achieve its policy of supporting disadvantaged small businesses and providing benefits to some of the most underemployed people in America. They explained that they have been trying to dispel program misperceptions caused by unsubstantiated allegations of misconduct and abuse, when they would rather be devoting their efforts to business and community development. Several tribal representatives felt that relatively few tribes have realized the benefits of the mentor/protégé component of the 8(a) program, and were concerned that SBA would be closing this business development option just as they are getting to the point where they would use it. Representatives also were concerned that SBA would propose changes that would restrict the participation of mentors in the program. That is not SBA's intent. SBA too believes that the 8(a) BD program is a much-needed and beneficial program, and that the tribal and ANC component of the program serves a valuable economic and community development purpose in addition to its business development purpose. It is not SBA's intent to shut down any component of the 8(a) program that truly assists the development of any small disadvantaged businesses. Specifically, SBA is not proposing to close this business development option to tribes and ANCs as some tribal representatives were concerned. SBA does not seek to make it more difficult for tribally-owned and ANC-owned firms to participate in

the 8(a) BD program, and merely looks for ways to help ensure that the benefits of the program flow to those who are truly eligible to participate. SBA has carefully reviewed both the testimony given at the tribal consultation meetings and the formal comments submitted in response thereto. SBA welcomes the opportunity to discuss its proposals with the tribal and ANC communities in more detail during the public comment period.

Initial Regulatory Flexibility Analysis

This rule, if finalized, may have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. As such, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What is the need for and objective of the rule, (2) what is SBA's description and estimate of the number of small entities to which the rule will apply, (3) what is the projected reporting, record keeping, and other compliance requirements of the rule, (4) what are the relevant Federal rules which may duplicate, overlap or conflict with the rule, and (5) what alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities? SBA will specifically address six provisions of the proposed rule which may have a significant impact on a substantial number of small businesses. They are: (1) The provisions relating to joint ventures between protégé firms and their SBA-approved mentors; (2) the requirement that the disadvantaged manager of an 8(a) applicant or Participant must reside in the United States and spend part of every month physically present at the primary offices of the applicant or Participant; (3) the provision excluding qualified individual retirement accounts from an individual's net worth in determining economic disadvantage; (4) the provisions establishing objective criteria for determining economic disadvantage in terms of income and total assets; (5) the provision requiring SBA to early graduate a firm from the 8(a) program if the firm becomes large for the size standard corresponding to its primary NAICS code; and (6) the provisions relating to what size 8(a) Participants must annually submit either audited or reviewed financial statements to SBA.

1. *What is the need for and objective of the rule?* The need for and objective of the provisions relating to joint ventures between protégé firms and their SBA-approved mentors is set forth in detail in the Regulatory Impact Analysis above.

SBA believes that the proposed requirement that the disadvantaged manager of an 8(a) applicant or Participant must reside in the United States and spend part of every month physically present at the primary offices of the applicant or Participant is needed to reduce the potential abuse of ''front'' companies in which a non-disadvantaged individual actually runs the day-to-day operations of the business.

SBA believes that a change is needed to exclude qualified individual retirement accounts from the calculation of an individual's net worth when considering economic disadvantage. As noted in the supplementary information above, SBA has found that the inclusion of individual retirement accounts in the calculation of an individual's net worth does not serve to disqualify wealthy individuals from participation in the program, but has worked to make middle and lower income individuals ineligible to the extent they have invested prudently in accounts to ensure income at a time in their lives that they are no longer working. SBA believes that it should not penalize an individual who has invested in a qualified retirement account.

SBA believes that it is necessary to put into the regulations provisions establishing objective criteria for income and total assets in determining economic disadvantage to publicize SBA's current policies in this area. While the proposed rule establishing $200,000 in income and $3,000,000 in total assets as the levels above which an individual is deemed not to be economically disadvantaged for purposes of initial 8(a) eligibility is not a change in SBA policy, these standards are currently contained only in decisions rendered by SBA's OHA. Including these standards in the regulatory text will aid all applications in more fully understanding SBA's eligibility requirements.

SBA believes that it makes sense to early graduate a firm from the 8(a) BD program where it no longer qualifies as small for its primary NAICS code for two consecutive years because it is reasonable to conclude that at that point the firm has substantially achieved the targets, objectives and goals contained in its business plan, and thus, has met the standard set forth in § 7(j)(10)(H) of the Small Business Act, 15 U.S.C. 636(j)(10(H), for graduation.

SBA also believes it makes sense to raise the revenue levels above which audited financial statements and reviewed financial statements should be required for continued 8(a) BD participation. As the cost for audited and reviewed financial statements increases, those costs are becoming more of a burden on developing disadvantaged small businesses. In addition, SBA notes that while size standards have increased due to inflation over time, the levels of revenue above which audited and reviewed financial statements are required for the 8(a) program have not. As such, SBA believes that it makes sense to increase these levels and alleviate the burden on smaller firms.

2. *What is SBA's description and estimate of the number of small entities to which the rule will apply?* In FY 2007, SBA approved 60 mentor/protégé agreements. In FY 2006, SBA approved 173 mentor/protégé agreements. There are currently more than 300 approved mentor/protégé agreements. The proposed changes to the mentor/protégé program would not affect all small firms that are currently SBA-approved protégés. The significant proposed restriction on the program would prohibit a joint venture between a protégé firm and its SBA-approved mentor to subcontract additional work on the contract to the mentor. Thus, it would affect only those mentor/protégé relationships in which the mentor and protégé firms joint venture for one or more government contracts and the mentor wants to also act as a subcontractor on the contract. While the number of these situations is not great, the potential for abuse without the proposed change is.

The average number of applications for the 8(a) BD program for the past five fiscal years (FYs 2003 to 2007) is 3,682. There are approximately 6–10 declines based solely on control issues per 100 declines. For this time period, there were 1,583 total declines for the 8(a) program. Based on the estimated number of declines due to control issues, this would translate as between 95 and 158 declines for control for the past five fiscal years, or an average of 19 to 30 per year. The number of firms declined for control reasons because the individual claiming disadvantaged status lived outside the United States is miniscule. We know of only two cases during the five year period where SBA declined a firm on that basis.

For the last five fiscal years, there are approximately 3–5 declines per 100 declines based solely on issues relating to economic disadvantage. This would translate into between 48 and 80 declines based on economic disadvantage during the last five fiscal years, or an average of 9 to 16 per year. SBA believes that the number of firms

declined due solely to significant assets in an IRA or other qualifying retirement account is very small. SBA anticipates that 1 or 2 firms per year which would have been found not to be economically disadvantaged, and thus ineligible for the 8(a) BD program, will be eligible because of the proposed change. Of the 9 to 16 declines per year due to economic disadvantage, less than half were due to excessive income or total assets. As such, the provisions establishing objective criteria for income and total assets would affect no more than 8 8(a) applicants each year.

During the last three fiscal years (FYs 2005 to 2007), a total of 591 firms were terminated from the 8(a) BD program (143 in FY 2007, 318 in FY 2006, and 130 in FY 2005), 342 firms voluntarily withdrew from the program (149 in FY 2007, 95 in FY 2006, and 98 in FY 2005), and 42 firms left the program due to early graduation (12 in FY 2007, 12 in FY 2006, and 18 in FY 2005).

As reported in the Dynamic Small Business Search, there are currently 9,609 Participants in the 8(a) BD program. Of those firms, 5,876 firms have less than $10 million in annual revenue, and 5,365 firms have less than $5 million in annual revenue. Thus, the proposed change to raise the revenue level under which Participants must submit audited or reviewed financial statements to SBA would ease the regulatory burden on these firms.

3. *What are the projected reporting, recordkeeping, and other compliance requirements of the rule and an estimate of the classes of small entities which will be subject to the requirements?* There would be no additional reporting or recordkeeping requirements imposed by the rule. The rule would ease the regulatory burden on smaller 8(a) firms. Specifically, SBA proposes to raise the level above which audited financial statements are required from Participants with gross annual receipts of more than $5,000,000 to Participants with gross annual receipts of more than $10,000,000. Reviewed financial statements would be required of all Participants with gross annual receipts between $2,000,000 and $10,000,000, instead of between $1,000,000 and $5,000,000.

4. *What are the relevant Federal rules which may duplicate, overlap or conflict with the rule?* The Federal Acquisition Regulation (FAR) defers to and incorporates the substance of the provisions set forth in SBA's regulations for issues pertaining to the 8(a) program. To the extent the FAR is inconsistent with 8(a) rules implemented by SBA, the FAR would need to be changed to be consistent.

Paperwork Reduction Act

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this proposed rule, if adopted in final form, would contain no new reporting or recordkeeping requirements.

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 124

Administrative practice and procedures, Government procurement, Hawaiian natives, Indians—business and finance, Minority businesses, Reporting and recordkeeping requirements, Tribally-owned concerns, Technical assistance.

For the reasons set forth above, the Small Business Administration proposes to amend parts 121 and 124 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

Subpart A—Size Eligibility Provisions and Standards

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644 and 662(5); and, Pub. L. 105–135, sec. 401 *et seq.,* 111 Stat. 2592.

2. Amend § 121.103 by revising paragraph (b)(6), by revising the second and third sentences of paragraph (h) introductory text, and by revising paragraph (h)(3)(iii) to read as follows:

§ 121.103 How does SBA determine affiliation?

* * * * *

(b) * * *

(6) An 8(a) BD Participant that has an SBA-approved mentor/protégé agreement is not affiliated with a mentor firm solely because the protégé firm receives assistance from the mentor under the agreement. Similarly, a protégé firm is not affiliated with its mentor solely because the protégé firm receives assistance from the mentor under a Federal Mentor-Protégé program where an exception to affiliation is specifically authorized by statute or by SBA under the procedures set forth in § 121.903. Affiliation may be found in either case for other reasons.

* * * * *

(h) * * * This means that a specific joint venture entity generally may not be awarded more than three contracts over a two year period, starting from the date of the award of the first contract, without the partners to the joint venture being deemed affiliated for all purposes. Because SBA determines size and affiliation as of the date an offeror submits its initial offer including price to a procuring agency, SBA will also determine compliance with this three awards in two years rule as of the date of initial offer including price. As such, an individual joint venture may be awarded more than three contracts without SBA finding general affiliation between the joint venture partners where the joint venture had received two or fewer contracts as of the date it submitted one or more additional offers which thereafter result in one or more additional contract awards. The same two (or more) entities may create additional joint ventures, and each new joint venture entity may be awarded up to three contracts in accordance with this section. At some point, however, such a longstanding inter-relationship or contractual dependence between the same joint venture partners will lead to a finding of general affiliation between and among them. For purposes of this provision and in order to facilitate tracking of the number of contract awards made to a joint venture, a joint venture must be in writing and must do business under its own name, and it may (but need not) be in the form of a separate legal entity, and it may (but need not) be populated. * * *

* * * * *

(3) * * *

(iii) Two firms approved by SBA to be a mentor and protégé under 13 CFR 124.520 may joint venture as a small business for any Federal government prime contract or subcontract, provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the procurement and, for purposes of 8(a) sole source requirements, has not reached the dollar limit set forth in 13 CFR 124.519. If the procurement is to be awarded through the 8(a) BD program, SBA must approve the joint venture pursuant to § 124.513. If the procurement is to be awarded other than through the 8(a) BD program (*e.g.,* small business set aside, HUBZone set aside), SBA need not approve the joint venture prior to award, but if the size status of the joint venture is protested, the provisions of §§ 124.513(c) and (d) will apply. This

means that the joint venture must meet the requirements of §§ 124.513(c) and (d) in order to receive the exception to affiliation authorized by this paragraph.

* * * * *

3. Amend § 121.402(b) by revising the last sentence and adding a new sentence at the end thereof to read as follows:

§ 121.402 What size standards are applicable to Federal Government contracting programs?

* * * * *

(b) * * * Acquisitions for supplies must be classified under the appropriate manufacturing NAICS code, not under a wholesale trade or retail trade NAICS code. A concern that submits an offer or quote for a contract or subcontract where the NAICS code assigned to the contract or subcontract is one for supplies, and furnishes a product it did not itself manufacture or produce, is categorized as a nonmanufacturer and deemed small if it meets the requirements set forth in § 121.406(b).

* * * * *

4. Amend § 121.406 by revising paragraph (a) introductory text, (a)(1) (b)(1) introductory text, revising paragraphs (b)(1)(ii) and (b)(1)(iii), by redesignating paragraphs (b)(3), (b)(4) and (b)(5) as paragraphs (b)(5), (b)(6), and (b)(7), respectively, by adding new paragraphs (b)(3) and (b)(4), and by revising newly redesignated paragraph (b)(6) to read as follows:

§ 121.406 How does a small business concern qualify to provide manufactured products or other supply items under small business set-aside or 8(a) contracts?

(a) *General.* In order to qualify as a small business concern for a small business set-aside or 8(a) contract to provide manufactured products or other supply items, an offeror must either:

(1) Be the manufacturer or producer of the end item being procured (and the end item must be manufactured or produced in the United States); or

* * * * *

(b) *Nonmanufacturers.* (1) A concern may qualify as a small business concern for a requirement to provide manufactured products or other supply items as a nonmanufacturer if it:

* * * * *

(ii) Takes ownership or possession of the item(s) with its personnel, equipment or facilities in a manner consistent with industry practice; and

(iii) Will supply the end item of a small business manufacturer, processor or producer made in the United States, or obtains a waiver of such requirement pursuant to paragraph (b)(5) of this section.

* * * * *

(3) The nonmanufacturer rule applies only to procurements that have been assigned a manufacturing NAICS code, Sectors 31–33. It does not apply to supply contracts that do not primarily consist of manufacturing.

(4) The nonmanufacturer rule applies only to the supply component of a requirement classified as a manufacturing contract. If a requirement is classified as a service contract, but also has a supply component, the nonmanufacturer rule does not apply to the supply component of the requirement.

Example 1 to paragraph (b)(4). A procuring agency seeks to acquire computer integration and maintenance services. Included within that requirement, the agency also seeks to acquire some computer hardware. If the procuring agency determines that the principal nature of the procurement is services and classifies the procurement as a services procurement, the nonmanufacturer rule does not apply to the computer hardware portion of the requirement. This means that while a contractor must meet the applicable performance of work requirement set forth in § 125.6 for the services portion of the contract, the contractor does not have to supply the computer hardware of a small business manufacturer.

Example 2 to paragraph (b)(4). A procuring agency seeks to acquire computer hardware, as well as computer integration and maintenance services. If the procuring agency determines that the principal nature of the procurement is for supplies and classifies the procurement as a supply procurement, the nonmanufacturer rule applies to the computer hardware portion of the requirement. A firm seeking to qualify as a small business nonmanufacturer must supply the computer hardware manufactured by a small business. Because the requirement is classified as a supply contract, the contractor does not have to meet the performance of work requirement set forth in § 125.6 for the services portion of the contract.

* * * * *

(6) The two waiver possibilities identified in paragraph (b)(5) of this section are called ''individual'' and ''class'' waivers respectively, and the procedures for requesting and granting them are contained in § 121.1204.

* * * * *

5. In § 121.1001, add a new paragraph (b)(10) to read as follows:

§ 121.1001 Who may initiate a size protest or request a formal size determination?

* * * * *

(b) * * *

(10) The SBA Inspector General may request a formal size determination with respect to any of the programs identified in paragraph (b) of this section.

PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

6. The authority citation for part 124 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d) and Pub. L. 99–661, Pub. L. 100–656, sec. 1207, Pub. L. 101–37, Pub. L. 101–574, section 8021, Pub. L. 108–87, and 42 U.S.C. 9815.

7. Remove the term ''SIC'' and add, in its place, the term ''NAICS,'' in the following places:

a. § 124.110(c);
b. § 124.111(d);
c. § 124.502(c)(3);
d. § 124.503(b);
e. § 124.503(b)(1);
f. § 124.503(b)(2);
g. § 124.503(c)(1)(iii);
h. § 124.503(g)(3);
i. § 124.505(a)(3);
j. § 124.507(b)(2)(i);
k. § 124.513(b)(1), (b)(1)(i), and (b)(1)(ii)(A);
l. § 124.513(b)(2);
m. § 124.513(b)(3);
n. § 124.514(a)(1);
o. § 124.515(d);
p. § 124.517(d)(1);
q. § 124.517(d)(2);
r. § 124.519(a)(1);
s. § 124.519(a)(2);
t. § 124.1002(b)(1), (b)(1)(i), and (b)(1)(ii); and
u. § 124.1002(f)(3).

8. Revise § 124.2 to read as follows:

§ 124.2 For what length of time may a business participate in the 8(a) BD program?

A Participant receives a program term of nine years from the date of SBA's approval letter certifying the concern's admission to the program. The Participant must maintain its program eligibility during its tenure in the program and must inform SBA of any changes that would adversely affect its program eligibility. The nine year program term may be shortened only by termination, early graduation or voluntary withdrawal as provided for in this subpart.

9. In § 124.3, add new definitions for ''NAICS code,'' and ''Regularly maintains an office'' in alphabetical order, and revise the definitions of ''Primary industry classification'' and ''Same or similar line of business,'' to read as follows:

§ 124.3 What definitions are important in the 8(a) BD program?

* * * * *

NAICS code means North American Industry Classification System code.

* * * * *

Primary industry classification means the six digit North American Industry Classification System (NAICS) code designation which best describes the primary business activity of the 8(a) BD applicant or Participant. The NAICS code designations are described in the North American Industry Classification System book published by the U.S. Office of Management and Budget. SBA utilizes § 121.107 of this chapter in determining a firm's primary industry classification. SBA may permit a Participant to change its primary industry classification if the Participant can demonstrate that the majority of its revenues during a two-year period have evolved from one NAICS code to another.

* * * * *

Regularly maintains an office means conducting business activities as an on-going business concern from a fixed location on a daily basis. The best evidence of the regular maintenance of an office is documentation that shows that third parties routinely transact business with a Participant at a location within a particular geographical area. Such evidence includes advertisements, bills, correspondence, lease agreements, land records, and evidence that the Participant has complied with all local requirements concerning registering, licensing, or filing with the State or County where the place of business is located.

Same or similar line of business means business activities within the same four-digit ''Industry Group'' of the NAICS Manual as the primary industry classification of the applicant or Participant. The phrase ''same business area'' is synonymous with this definition.

* * * * *

10. Revise § 124.101 to read as follows:

§ 124.101 What are the basic requirements a concern must meet for the 8(a) BD program?

Generally, a concern meets the basic requirements for admission to the 8(a) BD program if it is a small business which is unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of and residing in the United States, and which demonstrates potential for success.

11. Amend § 124.102 by redesignating paragraph (a) as paragraph (a)(1), and by adding a new paragraph (a)(2) to read as follows:

§ 124.102 What size business is eligible to participate in the 8(a) BD program?

(a)(1) * * *

(2) In order to remain eligible to participate in the 8(a) BD program after certification, a firm must generally remain small for its primary industry classification, as adjusted during the program. SBA may graduate a participant prior to the expiration of its program term where the firm exceeds the size standard corresponding to its primary NAICS code for two successive program years.

* * * * *

12. Amend § 124.104 by revising paragraph (b)(2); redesignating paragraph (c)(2)(ii) as paragraph (c)(2)(iv), adding new paragraphs (c)(2)(ii) and (c)(2)(iii), and by adding new paragraphs (c)(3) and (c)(4) to read as follows:

§ 124.104 Who is economically disadvantaged?

* * * * *

(b) * * *

(2) When married, an individual claiming economic disadvantage must submit separate financial information for his or her spouse, unless the individual and the spouse are legally separated. SBA may consider a spouse's financial situation in determining an individual's access to credit and capital. SBA does not take into consideration community property laws when determining economic disadvantage.

* * * * *

(c) * * *

(2) * * *

(ii) Funds invested in an Individual Retirement Account (IRA) or other official retirement account that are unavailable to an individual until retirement age without a significant penalty will not be considered in determining an individual's net worth. In order to properly assess whether funds invested in a retirement account may be excluded from an individual's net worth, the individual must provide information about the terms and restrictions of the account to SBA.

(iii) Income received from an S corporation will be excluded from net worth where the applicant or Participant provides documentary evidence demonstrating that the income was reinvested in the firm or used to pay taxes arising in the normal course of operations of the firm.

* * * * *

(3) *Personal income for the past two years.* If an individual's adjusted gross income averaged over the two years preceding submission of the 8(a) application exceeds $200,000, SBA will presume that such individual is not economically disadvantaged. For continued 8(a) BD eligibility, SBA will presume that an individual is not economically disadvantaged if his or her adjusted gross income averaged over the two preceding years exceeds $250,000. The presumption may be rebutted by a showing that this income level was unusual and not likely to occur in the future, that losses commensurate with and directly related to the earnings were suffered, or by evidence that the income is not indicative of lack of economic disadvantage. Income earned by S corporations which is reinvested in or used to pay taxes arising in the normal course of operations of the firm is exempted from income for purposes of this section provided that documentary evidence is submitted demonstrating this use. Likewise, S corporation losses may not be subtracted from an individual's income to reduce that income.

(4) *Fair market value of all assets.* An individual will generally not be considered economically disadvantaged if the fair market value of all his or her assets (including his or her primary residence and the value of the applicant/Participant firm) exceeds $3 million for an applicant concern and $4 million for continued 8(a) BD eligibility. The only assets excluded from this determination are funds excluded under paragraph (c)(2)(ii) of this section as being invested in a qualified IRA account.

13. Amend § 124.105 by revising paragraphs (g) and (h)(2) to read as follows:

§ 124.105 What does it mean to be unconditionally owned by one or more disadvantaged individuals?

* * * * *

(g) *Ownership of another Participant in the same or similar line of business.*

(1) An individual may not use his or her disadvantaged status to qualify a concern if that individual has an immediate family member who is using or has used his or her disadvantaged status to qualify another concern for the 8(a) BD program. The AA/BD may waive this prohibition if the two concerns have no connections, either in the form of ownership, control or contractual relationships, and provided the individual seeking to qualify the second concern has management and technical experience in the industry. Where the concern seeking a waiver is in the same or similar line of business as the current or former 8(a) concern, there is a presumption against granting the waiver. The applicant must provide clear and compelling evidence that no

connection exists between the two firms.

(2) If the AA/BD grants a waiver under paragraph (g)(1) of this section, SBA will, as part of its annual review, assess whether the firm continues to operate independently of the other current or former 8(a) concern of an immediate family member. SBA may initiate proceedings to terminate a firm for which a waiver was granted from further participation in the 8(a) BD program if it is apparent that there are connections between the two firms that were not disclosed to the AA/BD when the waiver was granted or that came into existence after the waiver was granted. SBA may also initiate termination proceedings if the firm begins to operate in the same or similar line of business as the current or former 8(a) concern of the immediate family member and the firm did not operate in the same or similar line of business at the time the waiver was granted.

(h) * * *

(2) A non-Participant concern in the same or similar line of business or a principal of such concern may not own more than a 10 percent interest in a Participant that is in the developmental stage or more than a 20 percent interest in a Participant in a transitional stage of the program, except that a former Participant or a principal of a former Participant (except those that have been terminated from 8(a) BD program participation pursuant to §§ 124.303 and 124.304) may have an equity ownership interest of up to 20 percent in a current Participant in the developmental stage of the program or up to 30 percent in a transitional stage Participant, in the same or similar line of business.

* * * * *

14. Amend § 124.106 by revising paragraph (a)(2), and (e) introductory text, and by adding a new paragraph (h) to read as follows:

§ 124.106 When do disadvantaged individuals control an applicant or Participant?

* * * * *

(a)(1) * * *

(2) A disadvantaged full-time manager must hold the highest officer position (usually President or Chief Executive Officer) in the applicant or Participant. Such manager must reside in the United States, and must generally spend at least part of every month physically present in the primary offices of the applicant or Participant.

* * * * *

(e) Non-disadvantaged individuals may be involved in the management of an applicant or Participant, and may be stockholders, partners, limited liability members, officers, and/or directors of the applicant or Participant. However, no non-disadvantaged individual or immediate family member may: * * *

* * * * *

(h) Notwithstanding the provisions of this section requiring a disadvantaged owner to control the daily business operations and long-term strategic planning of an 8(a) BD Participant, where a disadvantaged individual upon whom eligibility is based is a reserve component member in the United States military who has been called to active duty, the Participant may elect to designate one or more individuals to control the Participant on behalf of the disadvantaged individual during the active duty call-up period. If such an election is made, the Participant will continue to be treated as an eligible 8(a) Participant and no additional time will be added to its program term. Alternatively, the Participant may elect to suspend its 8(a) BD participation during the active duty call-up period pursuant to §§ 124.305(h)(1)(ii) and 124.305(h)(4).

§ 124.108 [Amended]

15. Amend § 124.108 by removing paragraph (f).

16. Amend § 124.109 by revising paragraphs (c)(3)(ii), (c)(4)(i) introductory text, and (c)(6) to read as follows:

§ 124.109 Do Indian tribes and Alaska Native Corporations have any special rules for applying to the 8(a) BD program?

* * * * *

(c) * * *

(3) * * *

(ii) A tribe may not own 51% or more of another firm which, either at the time of application or within the previous two years, has been operating in the 8(a) program under the same primary NAICS code as the applicant. A tribe may, however, own a Participant or other applicant that conducts or will conduct secondary business in the 8(a) BD program under the NAICS code which is the primary NAICS code of the applicant concern. In addition, once an applicant is admitted to the 8(a) BD program, it may not receive an 8(a) contract in a secondary NAICS code that is the primary NAICS code of another Participant (or former participant that has left the program within two years of the date of application) owned by the tribe for a period of two years from the date of admission to the program.

* * * * *

(4) * * *

(i) The management and daily business operations of a tribally-owned concern must be controlled by the tribe, through one or more individual members who possess sufficient management experience of an extent and complexity needed to run the concern, or through management as follows:

* * * * *

(6) *Potential for success.* A tribally-owned applicant concern must possess reasonable prospects for success in competing in the private sector if admitted to the 8(a) BD program. A tribally-owned applicant may establish potential for success by demonstrating that:

(i) It has been in business for at least two years, as evidenced by income tax returns for each of the two previous tax years showing operating revenues in the primary industry in with the applicant is seeking 8(a) BD certification; or

(ii) The individual(s) who will manage and control the daily business operations of the firm have substantial technical and management experience, the applicant has a record of successful performance on contracts from governmental or nongovernmental sources in its primary industry category, and the applicant has adequate capital to sustain its operations and carry out its business plan as a Participant; or

(iii) The tribe has made a firm written commitment to support the operations of the applicant concern and it has the financial ability to do so.

* * * * *

17. Amend § 124.112 by removing the word ''and'' at the end of paragraph (b)(7), by redesignating paragraph (b)(8) as paragraph (b)(9), by adding a new paragraph (b)(8), by revising paragraphs (d)(1) and (d)(3), and by adding new paragraphs (e) and (f) to read as follows:

§ 124.112 What criteria must a business meet to remain eligible to participate in the 8(a) BD program?

* * * * *

(b) * * *

(8) For each Participant owned by a tribe, ANC, NHO or CDC, information showing how its 8(a) participation has benefited the tribal or native members and/or the tribal, native or other community. This data includes information relating to funding cultural programs, employment assistance, jobs, scholarships, internships, subsistence activities, and other services to the affected community; and

* * * * *

(d) *Excessive withdrawals.* (1) The term withdrawal includes, but is not limited to, the following: cash dividends; distributions in excess of amounts needed to pay S Corporation taxes; cash and property withdrawals;

payments to immediate family members not employed by the Participant; bonuses to officers; and investments on behalf of an owner. SBA will look at the totality of the circumstances in determining whether to include a specific amount as a withdrawal under this paragraph.

* * * * *

(3) Withdrawals are excessive if during any fiscal year of the Participant they exceed:

(i) $200,000 for firms with sales up to $1,000,000;

(ii) $250,000 for firms with sales between $1,000,000 and $2,000,000; and

(iii) $400,000 for firms with sales exceeding $2,000,000.

* * * * *

(e) *Change in primary industry classification.* A Participant may request that the primary industry classification contained in its business plan be changed by filing such a request with its servicing SBA district office. SBA will grant such a request only where the Participant can demonstrate that the majority of its revenues during a two-year period have evolved from one NAICS code to another.

(f) *Graduation determination.* As part of the final annual review performed by SBA prior to the expiration of a Participant's nine-year program term, SBA will determine if the Participant has met the targets and objectives set forth in its business plan and, thus, whether the Participant will be considered to have graduated from the 8(a) BD program at the expiration of its program term.

18. Revise § 124.202 to read as follows:

§ 124.202 How must an application be filed?

An application for 8(a) BD program admission must generally be filed in an electronic format. An electronic application can be found by going to the 8(a) BD page of SBA's Web site (*www.sba.gov*). An applicant concern that does not have access to the electronic format or does not wish to file an electronic application may request in writing a hard copy application from the AA/BD. The SBA district office will provide an applicant concern with information regarding the 8(a) BD program.

19. Revise § 124.203 to read as follows:

§ 124.203 What must a concern submit to apply to the 8(a) BD program?

Each 8(a) BD applicant concern must submit those forms and attachments required by SBA when applying for admission to the 8(a) BD program. These forms and attachments may include, but not be limited to, financial statements, Federal personal and business tax returns, and personal history statements. An applicant must also submit IRS Form 4506T, Request for Copy or Transcript of Tax Form, to SBA. In all cases, the applicant must provide a wet signature from each individual claiming social and economic disadvantage status.

20. Amend § 124.204 by revising paragraph (a), redesignating paragraphs (c), (d) (e) and (f) as paragraphs (d), (e), (f) and (g), and adding new paragraph (c) to read as follows:

§ 124.204 How does SBA process applications for 8(a) BD program admission?

(a) The AA/BD is authorized to approve or decline applications for admission to the 8(a) BD program. The DPCE will receive, review and evaluate all 8(a) BD applications. Applications submitted by firms owned by ANCs will be initially reviewed by SBA's San Francisco DPCE unit. SBA will advise each program applicant within 15 days after the receipt of an application whether the application is complete and suitable for evaluation and, if not, what additional information or clarification is required to complete the application. SBA will process an application for 8(a) BD program participation within 90 days of receipt of a complete application package by the DPCE. Incomplete packages will not be processed.

* * * * *

(c) The burden of proof to demonstrate eligibility is on the applicant concern. If a concern does not provide requested information within the allotted time provided by SBA, or if it submits incomplete information, SBA may presume that disclosure of the missing information would adversely affect the firm or would demonstrate lack of eligibility in the area to which the information relates.

* * * * *

21. Revise § 124.205 (a) and (b) to read as follows:

§ 124.205 Can an applicant ask SBA to reconsider SBA's initial decision to decline its application?

(a) An applicant may request the AA/BD to reconsider his or her initial decline decision by filing a request for reconsideration with SBA. The applicant may submit a revised electronic application or submit its request for reconsideration to the SBA field office that originally processed its application by personal delivery, first class mail, express mail, facsimile transmission followed by first class mail, or commercial delivery service. The applicant must submit its request for reconsideration within 45 days of its receipt of written notice that its application was declined. If the date of actual receipt of such written notice cannot be determined, SBA will presume receipt to have occurred ten calendar days after the date the notice was sent to the applicant. The applicant must provide any additional information and documentation pertinent to overcoming the reason(s) for the initial decline, including information and documentation regarding changed circumstances.

(b) The AA/BD will issue a written decision within 45 days of SBA's receipt of the applicant's request. The AA/BD may either approve the application, deny it on the same grounds as the original decision, or deny it on other grounds. If denied, the AA/BD will explain why the applicant is not eligible for admission to the 8(a) BD program and give specific reasons for the decline.

* * * * *

22. Revise § 124.301 to read as follows:

§ 124.301 What are the ways a business may leave the 8(a) BD program?

A concern participating in the 8(a) BD program may leave the program by any of the following means:

(a) Expiration of the program term established pursuant to § 124.2;

(b) Voluntary withdrawal;

(c) Graduation pursuant to § 124.302;

(d) Early graduation pursuant to the provisions of §§ 124.302 and 124.304; or

(e) Termination pursuant to the provisions of §§ 124.303 and 124.304.

23. Amend § 124.302 by revising the heading, by revising paragraphs (a) introductory text and (a)(1), by removing paragraph (d), by redesignating paragraph (c) as paragraph (d), and by adding a new paragraph (c) to read as follows:

§ 124.302 What is graduation and what is early graduation?

(a) *General.* SBA may graduate a firm from the 8(a) BD program at the expiration of its program term (graduation) or prior to the expiration of its program term (early graduation) where SBA determines that:

(1) The concern has successfully completed the 8(a) BD program by substantially achieving the targets, objectives, and goals set forth in its business plan, and has demonstrated the ability to compete in the marketplace without assistance under the 8(a) BD program; or

* * * * *

(c) *Exceeding the size standard corresponding to the primary NAICS code.* SBA may graduate a participant prior to the expiration of its program term where the firm exceeds the size standard corresponding to its primary NAICS code for two successive program years.

* * * * *

24. Amend § 124.303 by revising paragraphs (a)(2), (a)(13) and (a)(16) to read as follows:

§ 124.303 What is termination?

(a) * * *

(2) Failure by the concern to maintain its eligibility for program participation, including failure by an individual owner or manager to continue to meet the requirements for economic disadvantage set forth in § 124.104 where such status is needed for eligibility and the Participant has not met the targets and objectives set forth in its business plan.

* * * * *

(13) Excessive withdrawals, including transfers of funds or other business assets, from the concern for the personal benefit of any of its owners or any person or entity affiliated with the owners that hinder the development of the concern (*see* § 124.112(d)).

* * * * *

(16) Debarment, suspension, voluntary exclusion, or ineligibility of the concern or its principals pursuant to 2 CFR parts 180 and 2700 or FAR subpart 9.4 (48 CFR part 9, subpart 9.4).

* * * * *

25. Revise § 124.304(f) to read as follows:

§ 124.304 What are the procedures for early graduation and termination?

* * * * *

(f) *Effect or early graduation or termination.* (1) After the effective date of early graduation or termination, a Participant is no longer eligible to receive any 8(a) BD program assistance. However, such concern is obligated to complete previously awarded 8(a) contracts, including any priced options which may be exercised.

(2) When SBA early graduates or terminates a firm from the 8(a) BD program, the firm will generally not qualify as an SDB for future procurement actions. If the firm believes that it does qualify as an SDB and seeks to certify itself as an SDB, as part of its SDB certification the firm must identify:

(i) That it has been early graduated or terminated; and

(ii) The circumstances that have changed since the early graduation or termination or that do not prevent it from qualifying as an SDB.

(3) Where a concern certifies that it qualifies as an SDB pursuant to paragraph (f)(2) of this section, the procuring activity contracting officer shall protest the SDB status of the firm to SBA pursuant to § 124.1010.

26. Amend § 124.305 by revising the first sentence of paragraph (a), and by revising paragraph (h) to read as follows:

§ 124.305 What is suspension and how is a Participant suspended from the 8(a) BD program?

(a) Except as set forth in paragraph (h) of this section, at any time after SBA issues a Letter of Intent to Terminate an 8(a) Participant pursuant to § 124.304, the AA/BD may suspend 8(a) contract support and all other forms of 8(a) BD program assistance to that Participant until the issue of the Participant's termination from the program is finally determined. * * *

* * * * *

(h)(1) SBA will suspend a Participant from receiving further 8(a) BD program benefits when termination proceedings have not been commenced pursuant to § 124.304 where:

(i) A Participant requests a change of ownership and/or control and SBA discovers that a change of ownership or control has in fact occurred prior to SBA's approval; or

(ii) A disadvantaged individual who is involved in the ownership and/or control of the Participant is called to active military duty by the United States, his or her participation in the firm's management and daily business operations is critical to the firm's continued eligibility, and the Participant elects not to designate a non-disadvantaged individual to control the concern during the call-up period pursuant to proposed § 124.106(h).

(2) A suspension initiated under paragraph (h) of this section will be commenced by the issuance of a notice similar to that required for termination-related suspensions under paragraph (b) of this section, except that a suspension issued under paragraph (h) not appealable.

(3) Where a Participant is suspended pursuant to paragraph (h)(1)(i) of this section and SBA approves the change of ownership and/or control, the length of the suspension will be added to the firm's program term only where the change in ownership or control results from the death or incapacity of a disadvantaged individual or where the firm requested prior approval and waited at least 60 days for SBA approval before making the change.

(4) Where a Participant is suspended pursuant to paragraph (h)(1)(ii) of this section, the Participant must notify SBA when the disadvantaged individual returns to control the firm so that SBA can immediately lift the suspension. When the suspension is lifted, the length of the suspension will be added to the concern's program term.

* * * * *

§ 124.403 [Amended]

27. Amend § 124.403 by removing paragraph (d).

28. Amend § 124.501 by revising the first sentence of paragraph (h) to read as follows:

§ 124.501 What general provisions apply to the award of 8(a) contracts?

* * * * *

(h) A Participant must certify that it qualifies as a small business under the size standard corresponding to the NAICS code assigned to each 8(a) contract. * * **?*

* * * * *

29. Amend § 124.503 by revising paragraph (h) to read as follows:

§ 124.503 How does SBA accept a procurement for award through the 8(a) BD program?

* * * * *

(h) *Task or Delivery Order Contracts*—(1) *Contracts set aside for exclusive competition among 8(a) Participants.* (i) A task or delivery order contract that is reserved exclusively for 8(a) Program Participants must follow the normal 8(a) competitive procedures, including an offering to and acceptance into the 8(a) program, SBA eligibility verification of the apparent successful offerors prior to contract award, and application of the performance of work requirements set forth in § 124.510, and the nonmanufacturer rule, if applicable, (*see* § 121.406(b).

(ii) Individual orders need not be offered to or accepted into the 8(a) BD program.

(iii) A concern awarded such a contract may generally continue to receive new orders even if it has grown to be other than small or has exited the 8(a) BD program, and agencies may continue to take credit toward their prime contracting goals for orders awarded to 8(a) Participants. However, a concern may not receive, and agencies may not take 8(a), SDB or small business credit, for an order where the concern has been asked by the procuring agency to re-certify its size status and is unable to do so (*see* § 121.404(g)), or where ownership or control of the concern has changed and SBA has granted a waiver to allow performance to continue (*see* § 124.515).

(2) *8(a) credit for orders issued under multiple award contracts that were not set aside for exclusive competition among eligible 8(a) Participants.* In order to receive 8(a) credit for orders placed under multiple award contracts that were not initially set aside for exclusive competition among 8(a) Participants:

(i) The order must be offered to and accepted into the 8(a) BD program;

(ii) The order must be competed exclusively among 8(a) concerns;

(iii) The order must require the concern comply with applicable limitations on subcontracting provisions (*see* § 125.6 of this chapter) and the nonmanufacturer rule, if applicable, (*see* § 121.406(b) of this chapter) in the performance of the individual order; and

(iv) SBA must verify that a concern is an eligible 8(a) concern prior to award of the order in accordance with § 124.507;

* * * * *

30–31. Amend § 124.504 by revising the first sentence of paragraph (a), by removing paragraph (d), by redesignating paragraph (e) as paragraph (d), and by revising redesignated paragraph (d) to read as follows:

§ 124.504 What circumstances limit SBA's ability to accept a procurement for award as an 8(a) contract?

(a) *Reservation as small business set-aside, or HUBZone or service disabled veteran-owned small business award.* The procuring activity issued a solicitation for or otherwise expressed publicly a clear intent to reserve the procurement as a small business set-aside or a HUBZone or service disabled veteran-owned award prior to offering the requirement to SBA for award as an 8(a) contract. * * *

* * * * *

(d) *Release for non-8(a) competition.* (1) Except as set forth in paragraph (d)(4) of this section, where a procurement is awarded as an 8(a) contract, its follow-on or renewable acquisition must remain in the 8(a) BD program unless SBA agrees to release it for non-8(a) competition. If a procuring agency would like to fulfill a follow-on or renewable acquisition outside of the 8(a) BD program, it must make a written request to and receive the concurrence of the AA/BD to do so. In determining whether to release a requirement from the 8(a) BD program, SBA will consider:

(i) Whether the agency has achieved its SDB goal;

(ii) Where the agency is in achieving its HUBZone, SDVO, WOSB, or small business goal, as appropriate; and

(iii) Whether the requirement is critical to the business development of the 8(a) Participant that is currently performing it.

(2) SBA may decline to accept the offer of a follow-on or renewable 8(a) acquisition in order to give a concern previously awarded the contract that is leaving or has left the 8(a) BD program the opportunity to compete for the requirement outside of the 8(a) BD program.

(i) SBA will consider release under this paragraph (d)(2) only where:

(A) The procurement awarded through the 8(a) BD program is being or was performed by either a Participant whose program term will expire prior to contract completion, or by a former Participant whose program term expired within one year of the date of the offering letter;

(B) The concern requests in writing that SBA decline to accept the offer prior to SBA's acceptance of the requirement for award as an 8(a) contract; and

(C) The concern qualifies as a small business for the requirement now offered to the 8(a) BD program.

(ii) In considering release under this paragraph (d)(2), SBA will balance the importance of the requirement to the concern's business development needs against the business development needs of other Participants that are qualified to perform the requirement. This determination will include consideration of whether rejection of the requirement would seriously reduce the pool of similar types of contracts available for award as 8(a) contracts. SBA will seek the views of the procuring agency.

(3) SBA will release a requirement under this paragraph only where the procuring activity agrees to procure the requirement as a small business, HUBZone, service disabled veteran-owned small business, or women-owned small business set-aside.

(4) The requirement that a follow-on procurement need must be released from the 8(a) BD program in order for it to be fulfilled outside the 8(a) BD program does not apply to orders offered to and accepted for the 8(a) BD program pursuant to § 124.503(h).

32. Amend § 124.506 by revising paragraph (a)(2)(ii), the example in paragraph (a) (3), and paragraph (b) to read as follows:

§ 124.506 At what dollar threshold must an 8(a) procurement be competed among eligible Participants?

* * * * *

(a) * * *

(2) * * *

(ii) The anticipated award price of the contract, including options, will exceed $5,500,000 for contracts assigned manufacturing NAICS codes and $3,500,000 for all other contracts; and

* * *

* * * * *

(3) * * *

Example to paragraph (a)(3). If the anticipated award price for a professional services requirement is determined to be $3.2 million and it is accepted as a sole source 8(a) requirement on that basis, a sole source award will be valid even if the contract price arrived at after negotiation is $3.6 million.

* * * * *

(b) *Exemption from competitive thresholds for Participants owned by Indian tribes, ANCs and NHOs.* (1) SBA may award a sole source 8(a) contract to a Participant concern owned and controlled by an Indian tribe or an ANC where the anticipated value of the procurement exceeds the applicable competitive threshold if SBA has not accepted the requirement into the 8(a) BD program as a competitive procurement.

(2) SBA may award a sole source 8(a) contract to a Participant concern owned and controlled by an NHO on behalf of DoD where the anticipated value of the procurement exceeds the applicable competitive threshold if SBA has not accepted the requirement into the 8(a) BD program as a competitive procurement.

(3) There is no requirement that a procurement must be competed whenever possible before it can be accepted on a sole source basis for a tribally-owned or ANC-owned concern, or a concern owned by an NHO for contracts accepted on behalf of DoD, but a procurement may not be removed from competition to award it to a tribally-owned, ANC-owned or NHO-owned concern on a sole source basis.

(4) A joint venture between one or more eligible tribally-owned, ANC-owned or NHO-owned Participants and one or more non-8(a) business concerns may be awarded sole source 8(a) contracts above the competitive threshold amount, provided that no non-8(a) joint venture partner also acts as a subcontractor to the joint venture awardee.

* * * * *

33. Amend § 124.507 by adding paragraphs (c)(2)(i), (c)(2)(ii) and (c)(2)(iii) to read as follows:

§ 124.507 What procedures apply to competitive procurements?

* * * * *

(c) * * *

(2) * * *

(i) A Participant may have bona fide places of business in more than one location.

(ii) In order for a Participant to establish a bona fide place of business in a particular geographic location, the SBA district office serving the geographic area of that location must determine if that location in fact qualifies as a bona fide place of business under SBA's requirements.

(A) A Participant must submit a request for a bona fide business determination to the SBA district office servicing it.

(B) The servicing district office will forward the request to the SBA district office serving the geographic area of the particular location for processing.

(iii) In order for a Participant to be eligible to submit an offer for a 8(a) procurement limited to a specific geographic area, it must receive from SBA a determination that it has a bona fide place of business within that area prior to submitting its offer for the procurement.

* * * * *

34. Amend § 124.509(a)(1) by adding a new sentence at the end thereof to read as follows:

§ 124.509 What are non-8(a) business activity targets?

(a) *General.* (1) * * * Work performed by an 8(a) Participant for any Federal department or agency other than through an 8(a) contract, including work performed on orders under the General Services Administration Multiple Award Schedule program, and work performed as a subcontractor, including work performed as a subcontractor to another 8(a) Participant on an 8(a) contract, qualifies as work performed outside the 8(a) BD program.

* * * * *

35. Amend § 124.512 by adding a new sentence at the end of paragraph (a), by revising paragraph (b), and by adding a new paragraph (c) to read as follows:

§ 124.512 Delegation of contract administration to procuring agencies.

(a) * * * Tracking compliance with the performance of work requirements set forth in § 124.510 is included within the functions performed by the procuring activity as part of contract administration.

(b) This delegation of contract administration authorizes a contracting officer to execute any priced option or in scope modification without SBA's concurrence. The contracting officer must, however, submit copies to SBA of all modifications and options exercised within 10 business days of their occurrence.

(c) SBA may conduct periodic compliance on-site agency reviews of the files of all contracts awarded pursuant to Section 8(a) authority.

36. Amend § 124.513 by revising paragraphs (c)(3), (c)(6), (d), and (e), and adding a new paragraph (i) to read as follows:

§ 124.513 Under what circumstances can a joint venture be awarded an 8(a) contract?

* * * * *

(c) * * *

(3) Stating that the 8(a) Participant(s) must receive profits from the joint venture commensurate with the work performed by the 8(a) Participant(s);

* * * * *

(6) Specifying the responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, including ways that the parties to the joint venture will ensure that the joint venture and the 8(a) partner(s) to the joint venture will meet the performance of work requirements set forth in paragraph (d) of this section.

* * * * *

(d) *Performance of work.* For any 8(a) contract, including those between mentors and protégés authorized by § 124.520, the joint venture must perform the applicable percentage of work required by § 124.510, and the 8(a) partner(s) to the joint venture must perform at least 40% of the work performed by the joint venture. The work performed by 8(a) partners to a joint venture must be more than administrative or ministerial functions so that they gain substantive experience.

(e) *Prior approval by SBA.* (1) SBA must approve a joint venture agreement prior to the award of an 8(a) contract on behalf of the joint venture.

(2) Where a joint venture has been established and approved by SBA for one 8(a) contract, a second or third 8(a) contract may be awarded to that joint venture provided an addendum to the joint venture agreement, setting forth the performance requirements on that second or third contract, is provided to and approved by SBA prior to contract award.

* * * * *

(i) *Performance of work report.* At the completion of every 8(a) contract awarded to a joint venture, the 8(a) Participant(s) to the joint venture must submit a report to the local SBA district office explaining how the performance of work requirements were met for the contract.

37. Amend § 124.519 by revising paragraphs (a) and (f) to read as follows:

§ 124.519 Are there any dollar limits on the amount of 8(a) contracts that a Participant may receive?

(a) A Participant (other than one owned by an Indian tribe, ANC or NHO) may not receive sole source 8(a) contract awards where it has received a combined total of competitive and sole source 8(a) contracts in excess of the dollar amount set forth in this section during its participation in the 8(a) BD program.

* * * * *

(f) The AA/BD may waive the requirement prohibiting a Participant from receiving sole source 8(a) contracts in excess of the dollar amount set forth in this section where the head of a procuring activity represents that award of a sole source 8(a) contract to the Participant is needed to achieve significant interests of the Government.

38. Amend § 124.520 by:

A. Revising the heading,

B. Revising the first and last sentences of paragraph (a),

C. Revising paragraphs (b)(1)(i) and (iv), (b)(2), and (b)(3),

D. Revising paragraph (c)(1),

E. Adding a new sentence to the end of paragraph (c)(2),

F. Revising paragraph (c)(3),

G. Adding new paragraphs (c)(4) and (5),

H. Revising paragraph (d)(1),

I. Revising paragraph (e)(1), and the second sentence of (e)(2),

J. Redesignating paragraph (f) as paragraph (g),

K. Adding a new paragraph (f),

L. Redesignating newly designated paragraphs (g)(2) and (g)(3) as paragraphs (g)(3) and (g)(4),

M. Adding a new paragraph (g)(2), and

N. Adding a new paragraph (h)

The additions and revisions read as follows:

§ 124.520 What are the rules governing SBA's Mentor/Protégé program?

(a) *General.* The mentor/protégé program is designed to encourage approved mentors to provide various forms of business development assistance to protégé firms. * * * The purpose of the mentor/protégé relationship is to enhance the capabilities of the protégé, assist the protégé with meeting the goals established in its SBA-approved business plan, and to improve its ability to successfully compete for contracts.

* * * * *

(b) * * *

(1) * * *

(i) Possesses favorable financial health;

* * * * *

(iv) Can impart value to a protégé firm due to lessons learned and practical experience gained because of the 8(a) BD program, or through its knowledge of general business operations and government contracting.

(2) Generally a mentor will have no more than one protégé at a time. However, the AA/BD may authorize a concern to mentor more than one protégé at a time where the concern can demonstrate that the additional mentor/protégé relationship will not adversely affect the development of either protégé firm (*e.g.,* the second firm may not be a competitor of the first firm). Under no circumstances will a mentor be permitted to have more than three protégés at one time.

(3) In order to demonstrate its favorable financial health, a firm seeking to be a mentor must submit to SBA for review copies of the Federal tax returns it submitted to the IRS, or audited financial statements, including any notes, or in the case of publicly traded concerns the filings required by the Securities and Exchange Commission for the past three years.

* * * * *

(c) *Protégés.* (1) In order to initially qualify as a protégé firm, a Participant must:

(i) Be in the developmental stage of program participation; or

(ii) Have never received an 8(a) contract; or

(iii) Have a size that is less than half the size standard corresponding to its primary NAICS code.

(2) * * * Once a firm graduates from or otherwise leaves the 8(a) BD program, it will not be eligible for any further benefits from its mentor/protégé relationship (*i.e.,* the receipts and/or employees of the protégé and mentor will generally be aggregated in determining size for any joint venture between the mentor and protégé after the protégé leaves the 8(a) BD program).

(3) A protégé firm may generally have only one mentor at a time. The AA/BD may approve a second mentor for a particular protégé firm where (i) the second relationship pertains to an unrelated, secondary NAICS code; (ii) the protégé firm is seeking to acquire a specific expertise that the first mentor does not possess; and (iii) the second relationship will not compete or otherwise conflict with the business development assistance set forth in the first mentor/protégé relationship.

(4) A protégé may not become a mentor and retain its protégé status. The protégé must terminate its mentor/protégé agreement with its mentor before it will be approved as a mentor to another 8(a) Participant.

(5) SBA will not approve a mentor/protégé relationship for an 8(a) Participant with less than one year remaining in its program term.

(d) *Benefits.* (1) A mentor and protégé may joint venture as a small business for any government prime contract or subcontract, including procurements with a dollar value less than half the size standard corresponding to the assigned NAICS code and 8(a) sole source contracts, provided the protégé qualifies as small for the procurement and, for purposes of 8(a) sole source requirements, the protégé has not reached the dollar limit set forth in § 124.519.

(i) SBA must approve the mentor/protégé agreement before the two firms may submit an offer as a joint venture on a particular government prime contract or subcontract and receive the exclusion from affiliation.

(ii) In order to receive the exclusion from affiliation for both 8(a) and non-8(a) procurements, the joint venture must meet the requirements set forth in § 124.513(c).

(e) *Written agreement.* (1) The mentor and protégé firms must enter a written agreement setting forth an assessment of the protégé's needs and providing a detailed description and timeline for the delivery of the assistance the mentor commits to provide to address those needs (*e.g.,* management and/or technical assistance, loans and/or equity investments, cooperation on joint venture projects, or subcontracts under prime contracts being performed by the mentor). The mentor/protégé agreement must:

(i) Address how the assistance to be provided through the agreement will help the protégé firm meet the goals established in its SBA-approved business plan;

(ii) Establish a single point of contact in the mentor concern who is responsible for managing and implementing the mentor/protégé agreement; and

(iii) Provide that the mentor will provide such assistance to the protégé firm for at least one year.

(2) * * * The agreement will not be approved if SBA determines that the assistance to be provided is not sufficient to promote any real developmental gains to the protégé, or if SBA determines that the agreement is merely a vehicle to enable the mentor to receive 8(a) contracts.

* * * * *

(f) *Decision to decline mentor/protégé relationship.* (1) Where SBA declines to approve a specific mentor/protégé agreement, the protégé may request the AA/BD to reconsider the Agency's initial decline decision by filing a request for reconsideration with its servicing SBA district office within 45 calendar days of receiving notice that its mentor/protégé agreement was declined. The protégé may revise the proposed mentor/protégé agreement and provide any additional information and documentation pertinent to overcoming the reason(s) for the initial decline to its servicing district office.

(2) The AA/BD will issue a written decision within 45 calendar days of receipt of the protégé's request. The AA/BD may either approve the mentor/protégé agreement, deny it on the same grounds as the original decision, or deny it on other grounds. If denied, the AA/BD will explain why the mentor/protégé agreement does not meet the requirements of § 124.520 and give specific reasons for the decline.

(3) If the AA/BD declines the mentor/protégé agreement solely on issues not raised in the initial decline, the protégé can ask for reconsideration as if it were an initial decline.

(4) If SBA's final decision (either by allowing 45 calendar days to pass from receiving the initial decision or the decision by the AA/BD on reconsideration) is to decline a specific mentor/protégé agreement, the 8(a) firm seeking to be a protégé cannot attempt to enter another mentor/protégé relationship with the same mentor for a period of one year from the date of the final decision. The 8(a) firm may, however, submit another proposed mentor/protégé agreement with a different proposed mentor at any time after the SBA's final decline decision.

(g) * * *

(2) The protégé must report the mentoring services it receives by category and hours.

* * * * *

(h) *Consequences of not providing assistance set forth in the mentor/protégé agreement.* (1) Where SBA determines that a mentor has not provided to the protégé firm the business development assistance set forth in its mentor/protégé agreement, SBA will notify the mentor of such determination and afford the mentor an opportunity to respond. The mentor must respond within 30 days of the notification, explaining why it has not provided the agreed upon assistance and setting forth a definitive plan as to when it will provide such assistance. If the mentor fails to respond, does not supply adequate reasons for its failure to provide the agreed upon assistance, or does not set forth a definite plan to provide the assistance:

(i) SBA will recommend to the relevant procuring agency to issue a stop work order for each Federal contract for which the mentor and protégé are performing as a small business joint venture pursuant to paragraph (d)(1) of this section;

(ii) SBA will terminate its mentor/protégé agreement; and

(iii) The firm will be ineligible to again act as a mentor for a period of two years from the date SBA terminates the mentor/protégé agreement.

(2) SBA may consider a mentor's failure to comply with the terms and conditions of an SBA-approved mentor/protégé agreement as a basis for debarment on the grounds, including but not limited to, that the mentor has not complied with the terms of a public agreement under 2 CFR 180.800(b).

39. Amend § 124.601 by revising paragraph (a) to read as follows:

§ 124.601 What reports does SBA require concerning parties who assist Participants in obtaining Federal contracts?

(a) Each Participant must submit semi-annually a written report to its assigned BOS that includes a listing of any agents, representatives, attorneys, accountants, consultants and other parties (other than employees) receiving fees, commissions, or compensation of any kind to assist such participant in obtaining a Federal contract. The listing must indicate the amount of compensation paid and a description of the activities performed for such compensation.

* * * * *

40. Amend § 124.602 by revising paragraphs (a) introductory text, (b), and (c) to read as follows:

§ 124.602 What kind of annual financial statement must a Participant submit to SBA?

(a) Participants with gross annual receipts of more than $10,000,000 must submit to SBA audited annual financial statements prepared by a licensed independent public accountant within 120 days after the close of the concern's fiscal year.

* * * * *

(b) Participants with gross annual receipts between $2,000,000 and $10,000,000 must submit to SBA reviewed annual financial statements prepared by a licensed independent public accountant within 90 days after the close of the concern's fiscal year

(c) Participants with gross annual receipts of less than $2,000,000 must submit to SBA an annual statement prepared in-house or a compilation statement prepared by a licensed independent public accountant, verified as to accuracy by an authorized officer, partner, limited liability member, or sole proprietor of the Participant, including signature and date, within 90 days after the close of the concern's fiscal year.

41. Amend § 124.1002 by revising paragraph (d) and adding a new paragraph (h) to read as follows:

§ 124.1002 What is a Small Disadvantaged Business (SDB)?

* * * * *

(d) *Additional eligibility criteria.* (1) Except for tribes, ANCs, CDCs, and NHOs, each individual claiming disadvantaged status must be a citizen of the United States.

(2) The other eligibility requirements set forth in § 124.108 for 8(a) BD program participation do not apply to SDB eligibility.

* * * * *

(h) *Full-time requirement for SDB purposes.* An SDB is considered to be managed on a full-time basis by a disadvantaged individual if such individual works for the concern during all of the hours the concern operates. For example, if a concern operates 20 hours per week and the disadvantaged manager works for the firm during those twenty hours, that individual will be considered as working full time for the firm.

Karen G. Mills,

Administrator.

[FR Doc. E9–25416 Filed 10–27–09; 8:45 am]

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Federal Register

Wednesday,
October 28, 2009

Part V

Department of Homeland Security

8 CFR Parts 1, 208, 209, et al.

Department of Justice

Executive Office for Immigration Review

8 CFR Parts 1001, 1208, 1209, et al.

Application of Immigration Regulations to the Commonwealth of the Northern Mariana Islands; Interim Final Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 1, 208, 209, 212, 214, 217, 235, 245, 274a, 286, and 299

[CIS No. 2460–08; DHS Docket No. USCIS–2008–0039]

RIN 1615–AB77

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1001, 1208, 1209, 1212, 1235, and 1245 and 1274a

[EOIR Docket No. 169 AG Order No. 3120–2009]

RIN 1125–AA67

Application of Immigration Regulations to the Commonwealth of the Northern Mariana Islands

AGENCY: U.S. Citizenship and Immigration Services, DHS; Executive Office for Immigration Review, DOJ.

ACTION: Interim final rule.

SUMMARY: The Department of Homeland Security (DHS) and the Department of Justice (DOJ) are implementing conforming amendments to their respective regulations to comply with the Consolidated Natural Resources Act of 2008 (CNRA). The CNRA extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI). This rule amends the regulations governing: asylum and credible fear of persecution determinations; references to the geographical ''United States'' and its territories and possessions; alien classifications authorized for employment; documentation acceptable for Employment Eligibility Verification; employment of unauthorized aliens; and adjustment of status of immediate relatives admitted under the Guam-CNMI Visa Waiver Program. Additionally, this rule makes a technical change to correct a citation error in the regulations governing the Visa Waiver Program and the regulations governing asylum and withholding of removal. The purpose of this rule is to ensure that the regulations apply to persons and entities arriving in or physically present in the CNMI to the extent authorized by the CNRA.

DATES: The rule will be effective November 28, 2009.

Written comments on this rule must be submitted on or before November 27, 2009.

Written comments on the Paperwork Reduction Act section of this rule must be submitted on or before November 27, 2009.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2008–0039 by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210. To ensure proper handling, please reference DHS Docket No. USCIS–2008–0039 on your correspondence. This mailing address may be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210. Contact Telephone Number is (202) 272–8377.

FOR FURTHER INFORMATION CONTACT:

Regarding 8 CFR Parts 1, 208, 209, 212, 214, 217, 235, 245, 274a, and 286 and 299: Fred Ongcapin, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529–2211, telephone (202) 272–8221 (not a toll-free call).

Regarding 8 CFR Parts 1001, 1208, 1209, 1212, 1235, 1245, and 1274a: Robin Stutman, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22401, telephone (703) 305–0470 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

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I. Public Participation—Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. All submissions received must include the agency name and DHS Docket No. USCIS–2008–0039. All comments received will be posted without change to *www.regulations.gov*, including any personal information provided.

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this interim rule. Comments that will provide the most assistance will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

For access to the electronic docket to read background documents or comments received, go to *www.regulations.gov.* Submitted comments may also be inspected at the Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210.

II. Background

The Commonwealth of the Northern Mariana Islands (CNMI) is a U.S. territory located in the Western Pacific that has been subject to most U.S. laws for many years. The CNMI has administered its own immigration system under the terms of the 1976 Covenant with the United States. *See* Joint Resolution to Approve the ''Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America,'' and for Other Purposes (Covenant Act), Public Law 94–241, sec. 1, 90 Stat. 263, 48 U.S.C. 1801 note (1976) (48 U.S.C. 1801 note (2006)). On May 8, 2008, President Bush signed into law the Consolidated Natural Resources Act of 2008 (CNRA). *See* Public Law No. 110–229, Title VII, 122 Stat. 754, 853 (2008). Title VII of the CNRA extends U.S. immigration laws to the CNMI. The intent of Congress in passing this legislation is to ensure effective border controls and properly address national security and homeland security concerns by extending U.S. immigration law to the CNMI. *See* Sec. 701(a) of Public Law 110–229. U.S. immigration law is defined by statute as the provisions of the Immigration and Nationality Act (Act or INA) (*i.e.,* title 8, Chapter 12 of the U.S. Code), and ''all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, expulsion, or removal of aliens.'' *See* INA sec. 101(a)(17), 8 U.S.C. 1101(a)(17).

Section 702 of the CNRA was scheduled to become effective approximately one year after the date of enactment, subject to certain transition

provisions. *See* Sec. 6(a)(1) of Public Law 94–241, as added by sec. 702(a) of Public Law 110–229. On March 31, 2009, DHS announced that the Secretary of Homeland Security, in her discretion under the CNRA, had extended the effective date of the transition program from June 1, 2009 (the first day of the first full month commencing one year from the date of enactment of the CNRA), to November 28, 2009. The transition period concludes on December 31, 2014. Most amendments to the INA made by the CNRA take effect on the transition program effective date, November 28, 2009. Sec. 705(b) of Public Law 110–229.

III. Responsibilities of the Secretary of Homeland Security and the Attorney General

Under the INA, as amended by the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135 (codified at 6 U.S.C. 101 *et seq.*), the Secretary of Homeland Security is charged with the administration and enforcement of the INA, and all other laws relating to the immigration and naturalization of aliens, except insofar as such laws relate to the powers, functions, or duties conferred upon the President, the Attorney General, the Secretary of State, or consular officers. *See* INA sec. 103(a)(1), 8 U.S.C. 1103(a)(1). The Homeland Security Act, however, retained the functions of the Executive Office for Immigration Review (EOIR) (including the immigration judges and the Board of Immigration Appeals) within DOJ under the authority of the Attorney General. *See* 6 U.S.C. 521, 8 U.S.C. 1103(g). The DHS regulations relating to immigration are codified principally in 8 CFR chapter I, while the Attorney General's regulations relating to EOIR are codified in 8 CFR chapter V, beginning with 8 CFR 1001.

Some of the changes implemented under the CNRA affect existing regulations governing both DHS immigration policy and procedures and proceedings before the immigration judges and the Board. Accordingly, it is necessary to make amendments both to the DHS regulations and to the DOJ regulations. The Secretary and the Attorney General are making conforming amendments to their respective regulations in this single rulemaking document.

IV. Amendments

This rule amends several regulatory provisions to implement some of the changes to the INA made by the CNRA. Specifically, this rule defines the often-used term in the CNRA, ''transition program effective date,'' removes references to the CNMI as a territory or possession of the United States not subject to the INA, and updates the definition of the geographical ''United States'' to include the CNMI for immigration purposes. In addition, this rule:

- Provides for the application in the CNMI of the prohibitions against the knowing employment of unauthorized aliens and the hiring of individuals without verifying their identity and employment authorization;
- Designates CNMI-issued documentation that may be acceptable by employers in the CNMI to verify the identity and employment authorization of newly hired employees;
- Adds work-authorized aliens in the CNMI under the CNRA's ''grandfather'' clause [1] for the first two years following the transition program effective date to the DHS work authorization regulations;
- Addresses the limitations on the granting of asylum under section 208 of the INA to aliens physically present in or arriving in the CNMI claiming a fear of persecution or torture in their country(ies) of nationality or, if stateless, country of last habitual residence, and adjustment of status under section 209(b) of the INA for such aliens; and
- Clarifies that immediate relatives who were admitted to the United States under the Guam Visa Waiver Program, pursuant to current 8 CFR 212.1(e) and 1212.1(e), and those who will be admitted to the United States under the new Guam-CNMI Visa Waiver Program, pursuant to new 8 CFR 212.1(q) and 1212.1(q), may apply for adjustment of status to that of a lawful permanent resident.

A. Definition of Transition Program Effective Date

The CNRA and its amendments to the Covenant Act make several references to the transition period or program effective date. *See, e.g.,* Sec. 6(a)(7), (b) and (c) of Public Law 94–241, as added by sec. 702(a) of Public Law 110–229; sec. 702(i) of Public Law 110–229; sec. 705(b) of Public Law 110–229. The CNRA states that the provisions of the INA shall apply to the CNMI, ''except as otherwise provided'' in the CNRA, ''effective on the first day of the first full month commencing 1 year after the date of enactment of the [CNRA] (hereafter referred to as the 'transition program effective date'),'' unless the Secretary of Homeland Security acts to delay this effective date. Sec. 6(a)(1) of Public Law 94–241, as added by sec. 702(a) of Public Law 110–229. On May 8, 2008, President Bush signed the CNRA into law. On March 31, 2009, DHS announced that the Secretary of Homeland Security, in her discretion under the CNRA, had extended the effective date of the transition program from June 1, 2009 (the first day of the first full month commencing one year from the date of enactment of the CNRA), to November 28, 2009. Accordingly, this rule defines ''transition program effective date'' to mean November 28, 2009, the effective date following the Secretary of Homeland Security's exercise of her authority pursuant to section 6(a)(2) of Public Law 94–241, as added by section 702(a) of Public Law 110–229, to delay commencement 180 days after June 1, 2009. *See* new 8 CFR 1.1(bb) and 8 CFR 1001.1(bb).

B. References to the Commonwealth of the Northern Mariana Islands

One step that the CNRA takes to effect application of U.S. immigration law to the CNMI is to include the CNMI in the meaning of ''United States'' and ''State,'' effective on the transition program effective date. Sec. 702(j)(2), (3) of Public Law 110–229; sec. 705(b) of Public Law 110–229. The INA defines these terms. INA sections 101(a)(36) and (a)(38), 8 U.S.C. 1101(a)(36) and (a)(38). While these amendments are automatically incorporated into the regulations by operation of 8 CFR 1.1(a) and 8 CFR 1001.1(a), which address the applicability of INA definitions, other more specific provisions in the DHS and DOJ regulations directly conflict with these amendments and require modification.

First, this rule incorporates specific references to the CNMI in those regulatory provisions that include a definition of the United States. *See* 8 CFR 214.11(a) (victims of trafficking in persons); 8 CFR 286.1(k) (immigration user fees). Second, this rule removes references to the CNMI when used in connection with references to U.S. territories and possessions, or modifies such references as appropriate. *See* 8 CFR 214.7(a)(3) and (a)(4)(i) (habitual residence); 8 CFR 214.7(b) (habitual residence in U.S. territories or possessions where the INA applies); 8 CFR 214.14(a)(11) (victims of criminal activity); 8 CFR 286.1(i) (immigration user fees). Finally, this rule removes references to the CNMI when listed

[1] The CNRA contains a ''grandfather'' clause that allows aliens lawfully present and authorized for employment under the laws of the CNMI to be considered authorized for employment by the Secretary of Homeland Security until the expiration of such CNMI employment authorization or two years from the transition program effective date, whichever is earlier. *See* Sec. 6(e)(2) of Public Law 94–241, as added by sec. 702(a) of Public Law 110–229.

separately from the geographical ''United States.'' *See* 8 CFR 214.11(b)(2) and (g) (victims of trafficking in persons).

C. CNMI Asylum Provisions

While most U.S. immigration benefits will become available to aliens in the CNMI on the transition program effective date, the CNRA precludes the availability of asylum under section 208 of the INA, 8 U.S.C. 1158, on the transition program effective date and throughout the transition period to aliens physically present in or arriving in the CNMI. Sec. 6(a)(7) of Public Law 94–241, as added by sec. 702(a) of Public Law 110–229. Asylum is a discretionary benefit that may be granted to aliens who establish that they have been persecuted or have a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA sections 101(a)(42) and 208(b), 8 U.S.C. 1101(a)(42) and 1158(b). There are certain exceptions that limit the eligibility for aliens to apply for asylum, including a limitation stating that an alien must file his or her application for asylum within one year after the date of last arrival in the United States. INA sec. 208(a)(2)(B), 8 U.S.C. 1158(a)(2)(B). Aliens granted asylum can seek lawful permanent resident (LPR) status in the United States by applying for adjustment of status no earlier than one year after being granted asylum. INA sec. 209(b), 8 U.S.C. 1159(b).

The CNRA, however, does not preclude the granting of two related forms of protection from removal in the CNMI during the transition period: withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), and withholding or deferral of removal under the regulations implementing Article 3 of the Convention Against Torture. *See* 8 CFR 208.16(c)–.18, 208.30–.31 (DHS regulations), 1208.16(c)–.18, 1208.30–.31 (DOJ regulations). Unlike asylum, withholding of removal under section 241(b)(3) of the INA is a mandatory prohibition on the removal to a particular country of a person who establishes that his or her life or freedom would be threatened in that country because of the person's race, religion, nationality, membership in a particular social group, or political opinion. INA sec. 241(b)(3)(A), 8 U.S.C. 1231(b)(3)(A); 8 CFR 208.16(a)–(b), 1208.16(a)–(b). Pursuant to U.S. obligations under the Convention Against Torture, a person may not be removed to a country where he or she is more likely than not to be tortured. *See* Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105–277, Div. G, tit. XXI, ch. 3, sub. B, sec. 2242, 112 Stat. 2681–822; 8 CFR 208.16(c)–.18, 208.30–.31, 1208.16(c)–.18, 1208.30–.31. Therefore, aliens who are ordered removed but who meet their burden under the Convention Against Torture may have their removal withheld. *Id.* If such aliens are ineligible for withholding (*e.g.,* due to serious criminality, human rights abuses, or national security concerns), their removal may be ordered deferred. *Id.* Deferral of removal is a more limited prohibition on removal to a country where a person is more likely than not to be tortured, regardless of the alien's ineligibility for asylum or withholding of removal. *Id.*[2]

The CNRA amendments to the Covenant Act provide that the asylum provisions of section 208 of the INA, 8 U.S.C. 1158, do not apply during the transition period to persons physically present in or arriving in the CNMI, including persons brought to the CNMI after having been interdicted in international or United States waters. Sec. 6(a)(7) of Public Law 94–241, as added by sec. 702(a) of Public Law 110–229. The INA amendments also provide for delayed applicability of the asylum laws in the CNMI, including those providing for asylee adjustment of status. *See* sec. 702(j)(4) of Public Law 110–229; *see also* INA sec. 208(e) and 235(b)(1), 8 U.S.C. 1158(e) and 1225(b)(1). Under the CNRA amendments to the INA, however, the delay does not extend throughout the transition period (ending December 31, 2014), as the CNRA amendments to the INA only extend the inapplicability of the asylum provisions under section 208 of the INA, 8 U.S.C. 1158, to December 31, 2013. *Id.* These provisions, therefore, would seem to call for lifting the statutory prohibition on seeking asylum for applications filed on or after January 1, 2014. *Id.*

The Secretary and the Attorney General, however, have considered the statutory discrepancy and conclude that the CNRA's provisions regarding asylum are properly read to apply in the CNMI during the entire transition period (ending December 31, 2014), rather than only through December 31, 2013. This reading is in keeping with the amendments to the Covenant Act and the intent of Congress, as evident from the CNRA's language and the pertinent legislative history. As the title of the relevant CNRA amendments, ''Conforming Amendments to the Immigration and Nationality Act,'' indicates, the CNRA amendments to the INA asylum provisions were to be ''conforming'' amendments. Sec. 702(j)(4) of Public Law 110–229. Because the CNRA amendments to the Covenant Act are the source of authority for the requirement to extend the immigration laws to the CNMI, and include the exception with respect to the asylum provisions, the conforming amendments to the asylum provisions in section 208 of the INA must be read to conform to the substantive amendments to the Covenant Act that provide that asylum will be unavailable to persons physically present in or arriving in the CNMI during the entire time of the transition period. In other words, in construing these provisions together, the one designated as the conforming provision should be construed to conform to the primary provision in the CNRA's amendments to the Covenant Act.

Moreover, the legislative history of the asylum-related provisions suggests how the discrepancy arose. The CNRA was an omnibus bill (S. 2739, 110th Cong. (2008) (enacted)) that originated in the Senate and contained numerous measures under the jurisdiction of the Senate Committee on Energy and Natural Resources that had previously been passed by the House of Representatives. One of these measures included H.R. 3079, 110th Cong. (2008), a free-standing bill virtually identical to what became the CNMI provisions of the CNRA (Title VII). The end date of the transition period provided by H.R. 3079 varied in different versions: December 31, 2017, in the bill as introduced, and December 31, 2013, in the bill as passed by the House and reported in the Senate. In the version passed by the House and reported in the Senate, the amendments to the asylum provisions provided for asylum eligibility ''on or after January 1, 2014,'' a date that conformed to the December

[2] A grant of withholding or deferral of removal is made with respect to an alien who has already been found by an immigration judge to be inadmissible or deportable and is subject to a final order of removal. *See Matter of I–S– & C–S–,* 24 I&N Dec. 432 (BIA 2008). Withholding or deferral of removal precludes removing the alien to the particular country where the alien has established that the alien would more likely than not face persecution or torture, but ''a grant of withholding of removal * * * does not afford the respondents any permanent right to remain in the United States. * * * The regulations make clear that a grant of withholding does not prevent DHS from removing an alien to a country other than the one to which removal has been withheld.'' *Id.* at 434. Moreover, with respect to aliens in the CNMI, we note that Congress has amended INA section 212(d)(7), 8 U.S.C. 1182(d)(7), so that its provisions with respect to the inadmissibility of aliens seeking to enter the continental United States, or any other place under the jurisdiction of the United States, will be applicable to aliens traveling from the CNMI. *See* sec. 702(d) of Public Law 110–229.

31, 2013 transition period end date. The intent was to provide for a five-year transition period. If the bill had become law in 2007, the year in which it was introduced, the transition period would have lasted from 2008 to 2013. The Senate bill also provided for a five-year transition period. However, with enactment occurring in 2008, the transition period shifted to end one year later. In S. 2739, Congress modified the December 31, 2013 date to 2014, but did not change the January 1, 2014 date to 2015 to conform to the new transition period. DHS and DOJ believe this to have been a technical oversight.

Where a statute includes a ''technical or clerical error'' such as an erroneous date, courts ''look beyond a statute's literal language to the statute's legislative history to fashion an interpretation that is consistent with Congress's intention in passing the statute.'' *Relocation Deadline Provision Contained in the 1996 Omnibus Consolidated Rescissions and Appropriations Act,* 20 Op. O.L.C. 209, 211 (1996) (interpreting statute including deadline that had already passed when the statute was enacted); *see also, e.g., Chickasaw Nation* v. *United States,* 534 U.S. 84, 88–89 (2001) (concluding that Congress mistakenly included provision in statute because Court could ''find no other reasonable reading''); *U.S. Nat'l Bank of Or.* v. *Indep. Ins. Agents of Am., Inc.,* 508 U.S. 439, 454–55 (1993) (disregarding quotation marks that suggested meaning contrary to congressional intent); *United States* v. *Pabon-Cruz,* 391 F.3d 86, 98, 104 (2d Cir. 2004) (concluding in light of legislative history that provision that ''ma[de] no sense'' grammatically was a drafting error); *United States* v. *Hartsock,* 347 F.3d 1, 6 (1st Cir. 2003) (disregarding plainly erroneous cross-reference in statute); *Ronson Patents Corp.* v. *Sparklets Devices, Inc.,* 102 F. Supp. 123, 124 (E.D. Mo. 1951) (disregarding erroneous date in statute because the error was ''apparent on the face of the act and [could] be corrected by other language of the act''); Memorandum Opinion for the General Counsel Department of Transportation and the Acting Chief Counsel Bureau of Alcohol, Tobacco, Firearms, and Explosives, from Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel, *Re: Department of Transportation Authority To Exempt Canadian Truck Drivers from Criminal Liability for Transporting Explosives* (Feb. 6, 2003) (concluding that Congress omitted ''s'' from end of word because contrary interpretation would yield ''absurd results''); *Marketing Loans for Grains & Wheat,* 16 Op. O.L.C. 114, 118–19 (June 3, 1992) (concluding based on textual analysis and legislative history that statutory provision was improperly denominated). Therefore, this rule uses the length of the transition period as defined in the final legislation to set the length of the inapplicability of section 208 of the INA, 8 U.S.C. 1158, in the CNMI to run through December 31, 2014.

This rule establishes several amendments to conform the regulations to the limitations on seeking asylum provided by the CNRA amendments to the Covenant Act and the INA. These amendments are described below.

1. General Applicability of the Asylum Provisions to Aliens Present in the CNMI Before January 1, 2015

This rule amends 8 CFR 208.1(a) by designating existing text as paragraph (a)(1) and by making minor edits to paragraph (a)(1) to show that the text in the paragraph is specific to ''chapter I'' and not ''chapter I and V'' of 8 CFR. Section 1208.1(a) is amended by designating existing text as paragraph (a)(1) and by making minor edits to paragraph (a)(1) to show that the text in the paragraph is specific to ''chapter V'' and not ''chapter I and V'' of 8 CFR. As previously explained, the DHS regulations relating to immigration are codified principally in 8 CFR chapter I, while DOJ regulations relating to EOIR are codified in 8 CFR chapter V, beginning with 8 CFR 1001.

This rule precludes the applicability of the provisions in subpart A prior to January 1, 2015, to aliens physically present in or arriving in the CNMI seeking asylum. *See* new 8 CFR 208.1(a)(2) and 1208.1(a)(2). Therefore, an alien already present in or arriving in the CNMI, seeking asylum prior to January 1, 2015, is not eligible to apply for asylum until on or after January 1, 2015. In addition, since the bar imposed by the CNRA amendments to the Covenant Act and INA is limited to asylum, this rule clarifies that the bar does not extend to aliens physically present in or arriving in the CNMI who establish eligibility for withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), or withholding or deferral of removal under the regulations implementing the Convention Against Torture. *See* new 8 CFR 208.1(a)(2) and 1208.1(a)(2). For purposes of clarity upon the application of the asylum provisions in the CNMI on or after January 1, 2015, this rule divides existing 8 CFR 208.1(a) and 1208.1(a) into sub-paragraphs (1), re-stating and not substantively modifying the existing general rule of applicability, and (2), stating the CNMI-specific temporally limited rule of applicability.

2. Jurisdiction of Immigration Judges Over Applications for Asylum Filed by Aliens in the CNMI Under a Visa Waiver Program

This rule clarifies the jurisdiction of immigration judges over applications for asylum under section 208 of the INA, 8 U.S.C. 1158, withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), or withholding of removal under the regulations implementing the Convention Against Torture, filed by aliens in the CNMI who were admitted to the United States under the Visa Waiver Program described in section 217 of the INA, 8 U.S.C. 1187, or the new Guam-CNMI Visa Waiver Program under section 212(l) of the INA, 8 U.S.C. 1182(l), as provided by the CNRA.

As of the transition program effective date, under the Visa Waiver Program described in section 217 of the INA, 8 U.S.C. 1187, visitors to the United States (including Guam and the CNMI) from designated countries will not need to obtain a visa in order to travel to the United States as visitors for business or pleasure. Under the Guam-CNMI Visa Waiver Program, visitors to Guam and the CNMI will not need a visa to travel to Guam and the CNMI temporarily as visitors for business or pleasure, but are generally required to obtain a visa to travel onward to the rest of the United States. Under both programs, such aliens' stay in the United States is subject to several limitations, including limits on their eligibility for immigration benefits and a requirement that they waive, with few exceptions, their right to contest their removal. Accordingly, aliens admitted under a Visa Waiver Program are not entitled to removal proceedings under section 240 of the INA, 8 U.S.C. 1229. However, they may obtain a hearing before an immigration judge with respect to a claim for asylum (if available) or withholding of removal or deferral of removal only. *See* new 8 CFR 208.2(c)(1)(iii)–(iv) and 1208.2(c)(1)(iii)–(iv).

In light of the limitation in the CNRA that aliens physically present in or arriving in the CNMI cannot apply for asylum prior to January 1, 2015, the rule establishes that while an immigration judge will have jurisdiction over asylum applications filed by aliens who are seeking admission or have been admitted to the CNMI under a Visa Waiver Program, the immigration judge will not have jurisdiction over claims for asylum made in the CNMI before January 1, 2015. *See* new 8 CFR

208.2(c)(1)(iii), (iv), (vii), and (viii); and 1208.2(c)(1)(iii), (iv), (vii), and (viii).

3. Deadline for Filing Asylum Applications for Aliens in the CNMI on or After January 1, 2015

This rule clarifies the applicability of asylum application filing deadlines to aliens present in or arriving in the CNMI. *See* new 8 CFR 208.4(a)(2)(ii) and 1208.4(a)(2)(ii). Under the statute and current regulations, aliens seeking asylum must file their asylum applications within one year of the date of their arrival in the United States, unless an exception applies. *See* INA sec. 208(a)(2)(B), 8 U.S.C. 1158(a)(2)(B); 8 CFR 208.4(a)(2)(i) and 1208.4(a)(2)(i). Since aliens in the CNMI seeking asylum will not be eligible to apply for asylum until January 1, 2015, application of this general one-year filing deadline without further clarification will render many otherwise eligible aliens who have been present in the CNMI for more than a year before January 1, 2015, ineligible to apply for asylum even though the reason for the delayed ability to file was a temporary statutory preclusion. Therefore, this rule applies the one-year filing deadline from January 1, 2015, or from the date of the alien's last arrival in the United States (including the CNMI), whichever is later. *See* new 8 CFR 208.4(a)(2)(ii) and 1208.4(a)(2)(ii). The rule provides, however, that for aliens who last arrived in the United States (*e.g.,* at Honolulu) prior to January 1, 2015, any period of physical presence in the United States since that last arrival (other than physical presence in the CNMI prior to January 1, 2015) will count toward the 1-year period. The purpose of that exception is to preclude aliens from effectively restarting the 1-year period simply by traveling to CNMI from another part of the United States. Prior to January 1, 2015, aliens in the CNMI may only obtain protection from persecution or torture through withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), or withholding or deferral of removal under the regulations implementing the Convention Against Torture.

4. Aliens in DHS Custody

This rule amends the regulations at 8 CFR 208.5 and 1208.5 governing aliens in DHS custody seeking asylum or expressing a fear of persecution or torture if removed. The rule's amendment to 8 CFR 208.1(a) and 1208.1(a), discussed above, provides that this provision does not apply to aliens present in the CNMI seeking asylum prior to January 1, 2015, in conformity with the CNRA amendments. However, DHS and DOJ believe that this provision requires clarification with respect to such aliens in DHS custody who express a fear of persecution or torture and may be eligible for withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), or withholding or deferral of removal under the regulations implementing the Convention Against Torture. Thus, this rule provides that such aliens present in the CNMI cannot be excluded, deported, or removed before a decision is made on these applications. *See* new 8 CFR 208.5(a) and 1208.5(a). This rule also makes technical modifications to these provisions, as well as to the title of the sections, replacing references to the Immigration and Naturalization Service (Service) with references to DHS.

With respect to alien crewmembers in DHS custody expressing a fear of persecution or torture, special application procedures apply. *See* new 8 CFR 208.5(b) and 1208.5(b). We believe that these procedures also require clarification in light of the CNRA amendments. Under the current regulations, alien crewmembers who file a timely asylum application, Form I–589, Application for Asylum and for Withholding of Removal, will also be served with a Notice of Referral to Immigration Judge, Form I–863, for consideration of their claim before an immigration judge, rather than having their claim heard initially by DHS. This rule clarifies that alien crewmembers in the CNMI may request withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), and withholding of removal under the regulations implementing the Convention Against Torture using this process, even though they are not eligible to apply for asylum prior to January 1, 2015. *See* new 8 CFR 208.5(b)(1)(iii) and 1208.5(b)(1)(iii).

5. Aliens Arriving in the CNMI Expressing a Credible Fear of Persecution or Torture

This rule makes conforming amendments to subparts B of 8 CFR parts 208 and 1208. Subparts B of CFR part 208 and 1208 begin at 8 CFR 208.30 and 1208.30, respectively. *See* 8 CFR 208.30 and 1208.30. These regulations set forth the procedures for handling claims by aliens arriving in the United States who express a credible fear of persecution and implement section 235(b) of the INA, 8 U.S.C. 1225(b), which governs the inspection of aliens arriving in the United States (or otherwise not admitted or paroled to the United States), including the screening of aliens for admissibility and the handling of claims of asylum or fear of persecution or torture. The CNRA amended section 235 of the INA to clarify that it does not authorize aliens arriving in the CNMI to apply for asylum prior to January 1, 2014. *See* sec. 702(j)(5) of Public Law 110–229 (adding new section 235(b)(1)(G) of the INA, 8 U.S.C. 1225(b)(1)(G)).

Under the current regulations, these credible fear procedures apply to aliens subject to section 235(b)(1) of the INA, 8 U.S.C. 1225(b)(1), and they would include the amendment made by the CNRA barring aliens in the CNMI from seeking asylum prior to January 1, 2014. *See* 8 CFR 208.30(a) and 1208.30(a). However, since the Secretary and the Attorney General have interpreted January 1, 2014, to be an incorrect reference to the end date of the transition period, as discussed above, this rule modifies 8 CFR 208.30(a) and 1208.30(a) to ensure that the asylum bar for aliens in the CNMI applies throughout the entire transition period, the period prior to January 1, 2015. *See* new 8 CFR 208.30(a) and 1208.30(a). In addition, this rule clarifies that these provisions do apply to aliens in the CNMI who establish eligibility for withholding of removal or protection under the regulations implementing the Convention Against Torture. *Id.; see also* new 8 CFR 208.30(e)(2) and existing 208.30(e)(3).

6. Eligibility of Asylees Physically Present in the CNMI to Adjust Status to That of an LPR

This rule amends the eligibility requirements for an asylee seeking to adjust his or her status to that of an LPR. An asylee may not adjust his or her status to that of an LPR while present in the CNMI until on or after January 1, 2015. *See* new 8 CFR 209.2(a)(3) and 1209.2(a)(3). This preclusion applies even if that applicant was granted asylum and relocated to the CNMI from elsewhere within the United States. This rule conforms the regulations to the preclusion of adjustment of status to such aliens required by section 702(j)(4) of the CNRA (adding new section 208(e) of the INA, 8 U.S.C. 1158(e)).

7. Procedures for Immigration or Asylum Officers for Referring Cases to the Immigration Judge

This rule makes conforming amendments to those regulatory provisions governing the applicable procedures for handling claims by arriving aliens who express a credible fear of persecution. These conforming amendments clarify that, with respect to aliens arriving in the CNMI, these application procedures do not apply to

applications for asylum filed prior to January 1, 2015, but do apply to such applications based upon eligibility for withholding of removal based on section 241(b)(3) of the INA. Determinations involving a credible fear of torture will be unaffected by the regulation. *See* new 8 CFR 217.4(a)(1), 235.6(a)(1)(ii) and (iii), and 1235.6(a)(1)(ii) and (iii).

D. Eligibility for Adjustment of Status for Immediate Relative Aliens Admitted Under the Guam-CNMI Visa Waiver Program

The CNRA amended the INA to provide for a special visa waiver program for the CNMI by creating a new Guam-CNMI Visa Waiver Program, which will supersede the current Guam Visa Waiver Program. *See* sec. 702(b) of Public Law 110–229. Under the new Guam-CNMI Visa Waiver Program, citizens or nationals of eligible countries may apply for admission to Guam or the CNMI at ports of entry in Guam or the CNMI as nonimmigrant visitors for a period of 45 days or less, for business or pleasure, without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements. U.S. Customs and Border Protection (CBP) is implementing the CNRA's creation of the Guam-CNMI Visa Waiver Program, including amending the applicable regulatory provisions at 8 CFR 212.1(e) and 212.1(q). DOJ will similarly revise its duplicate provisions at 8 CFR 1212.1(e) and add a new section 1212.1(q); however, these two paragraphs are being revised to omit regulatory provisions pertaining solely to matters within DHS's authority, by cross-referencing rather than restating in full those provisions in the DHS regulations at 8 CFR 212.1(e) and (q).

Currently, under 8 CFR 245.1(b)(7) and 1245.1(b)(7), an alien admitted into Guam under the Guam Visa Waiver Program or the Visa Waiver Program under section 217 of the INA is prohibited from adjusting his or her status to that of an LPR. *See* INA sec. 245(c)(4), 8 U.S.C. 1255(c)(4); 8 CFR 245.1(b)(7) and (8), 1245.1(b)(7) and (8). An exception to this ineligibility is when the alien is an ''immediate relative.'' *See* INA sec. 245(c)(4), 8 U.S.C. 1255(c)(4) (permitting ''immediate relatives'' admitted under the Visa Waiver Program to adjust status); *see generally* INA sec. 201(b)(2)(A)(i), 8 U.S.C. 1151(b)(2)(A)(i) (defining ''immediate relative''). An example of an immediate relative is an alien spouse of a U.S. citizen. The current provisions excluding aliens admitted under the Guam Visa Waiver Program from adjusting status, 8 CFR 245.1(b)(7), 212.1(e)(4)(i), 1245.1(b)(7) and 1212.1(e)(4)(i), do not contain the statutory exception for immediate relatives, nor do the provisions at 8 CFR 212.1(q)(4)(i) of the interim final rule implementing the Guam-CNMI Visa Waiver Program. Therefore, this rule amends 8 CFR 212.1(e)(4)(i) and (q)(4)(i), 245.1(b)(7), and 1245.1(b)(7) and adds a new 8 CFR 1212.1(q)(4)(i) to provide that immediate relatives admitted to Guam or to the CNMI (on or after the transition program effective date) under the Guam-CNMI Visa Waiver Program remain eligible to apply for adjustment of status under INA section 245(a) and 8 CFR 245.1(a) and 1245.1(a).

E. Verification of Employment Authorization in the CNMI

Upon the transition program effective date, employers and certain recruiters and referrers for a fee [3] (collectively referred to as ''employer(s)'') in the CNMI will be subject to the same prohibitions as other employers in the United States against knowingly employing aliens who are not authorized to work in the United States, since the addition of the CNMI to the United States as defined by the INA will apply section 274A of the INA in full to the CNMI. *See* sec. 6(a)(1) of Public Law 94–241, as added by sec. 702(a) of Public Law 110–229; INA sec. 274A(a)(1)(A), 8 U.S.C. 1324a(a)(1)(A). These employers also will be subject to the same responsibilities as other employers in the United States for taking steps to ensure that their workforce is authorized for employment. *See* INA sec. 274A(b), 8 U.S.C. 1324a(a)(1)(B). This rule establishes conforming amendments to the regulations to ensure the proper application of these laws to employers in the CNMI within the parameters of the CNRA.

In addition, upon the transition program effective date, employers and other entities in the CNMI will be subject to the anti-discrimination provisions of the INA, which make it unlawful for a person or any other entity to discriminate on the basis of citizenship status or national origin in the hiring, employment eligibility verification process, firing, or recruitment or referral for a fee of an individual. *See* INA sec. 274B, 8 U.S.C. 1324b; 28 CFR Parts 44 and 68. Further, upon the transition program effective date, individuals in the CNMI will be subject to the civil document fraud provisions of the INA (in addition to criminal penalties for U.S. immigration-related document fraud already applicable under title 18 of the U.S. Code), which generally make it unlawful for any person or entity to use fraudulent documents for various purposes under the INA. *See* INA sec. 274C, 8 U.S.C. 1324c.

1. Employment Eligibility Verification Process

It is unlawful for any employer in the United States to hire an individual knowing that he or she is unauthorized to work in the United States with respect to that employment. *See* INA sec. 274A(a)(1)(A), 8 U.S.C. 1324a(a)(1)(A). An alien is unauthorized to work if he or she is not an LPR or is not authorized to work under specific provisions of the INA or by DHS. *See* INA sec. 274A(h)(3), 8 U.S.C. 1324a(h)(3). If an employer hires an individual without knowledge that he or she is unauthorized to work in the United States, but gains this knowledge after the hire, or learns after the hire that the individual has become unauthorized to work, it is unlawful for the employer to continue to employ such individual. *See* INA sec. 274A(a)(2), 8 U.S.C. 1324a(a)(2). Consequences for violating these prohibitions include civil money penalties and, in some cases, criminal penalties. *See* INA sec. 274A(e), (f), and (g), 8 U.S.C. 1324a(e), (f), and (g).

To better ensure that employers do not hire unauthorized aliens in the first place, the INA makes it unlawful for employers to hire an individual for employment in the United States without verifying the identity and employment authorization of such individual, regardless of the individual's citizenship. *See* INA sec. 274A(a)(1)(B), 8 U.S.C. 1324a(a)(1)(B). As part of the verification process, employers must complete a Form I–9, retain the form for a statutorily-established period, and make the form available for inspection by certain government officials. *See* INA sec. 274A(b), 8 U.S.C. 1324a(b); 8 CFR 274a.2. On Form I–9, a newly-hired employee must attest that he or she is a U.S. citizen or national, LPR, or an alien otherwise authorized to work in

[3] 8 CFR 274a.2(a)(1) provides that ''[f]or purposes of complying with section 274A(b) of the Act and this section, all references to recruiters and referrers for a fee are limited to a person or entity who is either an agricultural association, agricultural employer, or farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act, Public Law 97–470 (29 U.S.C. 1802)).'' However, the anti-discrimination provisions of section 274B of the Act contain no such limitation. The Act broadly prohibits discrimination by ''any individual or other entity with respect to * * * recruitment or referral for a fee.'' INA sec. 274B(a)(1), 8 U.S.C. 1324b(a)(1).

the United States. The employee then must present a document from List A or a combination of documents from List B and C designated by statute or regulation and listed on Form I–9 as acceptable for establishing identity and employment authorization to his or her employer. The employer must examine the documents, record the document information on Form I–9, and attest that the documents appear both to be genuine and to relate to the individual presenting them.

2. Employment Authorization Documentation

After the transition program effective date, CNMI employers may hire or continue to employ aliens whose work authorization was granted under CNMI law before the transition program effective date within certain limitations. The Covenant Act amended by the CNRA contains a ''grandfather clause'' allowing alien workers in the CNMI lawfully present and authorized to be employed in the CNMI on the transition program effective date to be considered work authorized in the CNMI until their employment authorization expires under CNMI law, or for two years, whichever is shorter. Sec. 6(e)(2) of Public Law 94–241, as added by sec. 702(a) of Public Law 110–229. Therefore, employers who employ such aliens in the CNMI will not be in violation of the prohibition against knowingly hiring or continuing to employ an unauthorized alien, so long as the employment is consistent with the CNMI authorization.

This rule will allow aliens with unrestricted work authorization in the CNMI under the grandfather clause discussed above to present to their employers CNMI-specific documents in order to meet employment verification requirements. The Department of Labor of CNMI issues to aliens in the CNMI the following documentation evidencing work authorization:

- An Alien Entry Permit (with a red band) that shows the name of the alien, employer, job classification, citizenship, expiration date of the Alien Entry Permit, and the Alien Entry Permit number;[4] and
- A Temporary Work Authorization letter containing a photograph.[5]

In addition, CNMI issued permanent resident cards to aliens who were granted permanent resident status under CNMI law between April 1, 1977 and April 23, 1981.[6] This rule provides that these documents in combination with the alien's unexpired foreign passport are acceptable documents for completion of Form I–9 CNMI for new hires in the CNMI. *See* new 8 CFR 274a.2(b)(1)(v)(D). These documents establish both identity and work authorization for a two-year period starting from the transition program effective date. The limited duration of this provision parallels the period during which such aliens are authorized to work under the grandfather clause.

DHS has determined that, because of the limited situation and timeframe for verifying employment authorization for new hires in the CNMI, it is appropriate to designate certain limited documents that are used only in the CNMI as List A documents for Form I–9 purposes in the CNMI.

DHS is not amending Form I–9 (OMB Control Number 1615–0047) by adding CNMI-specific documents to its lists of acceptable documents and is instead creating a new form, Form I–9 CNMI, Employment Eligibility Verification, to be used by CNMI employers to document authorized employment. This form will contain new acceptable documents specific to the CNMI as described above. DHS determined that amending the form used for the 78 million estimated annual new hires and re-verifications in the U.S. to add CNMI-exclusive documents on the List of Acceptable Documents would result in unnecessary expense and confusion because those documents are not acceptable for Form I–9 purposes in the remainder of the United States. U.S. employers therefore will not be required under this rule to learn about documents that apply to a very limited geographic area and relatively small number of employers. Employers in any other part of the United States may not accept the CNMI documents specified in this rule to satisfy documentation requirements of the Form I–9. The identification documents for all other employers will continue to be as currently provided in 8 CFR 274a.2(b)(1)(v).

DHS has also considered what documentation may reasonably be available to U.S. nationals and others who are authorized to work in the CNMI for the purpose of documenting their employment authorization. Under the applicable statutes and regulations that will be in effect beginning on the transition program effective date, the CNMI will be a ''State'' as defined by section 101(a)(36) of the INA, so U.S. nationals, LPRs, and categories of aliens eligible to obtain unrestricted Social Security cards (*i.e.,* those without a restrictive legend limiting the card's use as evidence of employment authorization) can present the CNMI driver's license and Social Security card combination, or a U.S. passport, Permanent Resident Card, Employment Authorization Document (EAD) or other appropriate employment authorization document or documents. *See* 8 CFR 274a.2(b)(1)(v)(A)-(C). Nationals of the Marshall Islands and the Federated States of Micronesia may use a passport and Form I–94 showing admission under the Compacts of Free Association, and may also apply for an EAD; nationals of Palau will need to obtain an EAD. DHS is not aware at the present time of other specific accommodations to the CNMI relating to Form I–9 identity or employment authorization documentation that may be necessary, but invites public comment on this subject.

3. Application of the Hiring Prohibitions to Employers in the CNMI

The prohibitions in section 274A of the INA, 8 U.S.C. 1324a, against the hiring of unauthorized aliens and the hiring of individuals without verifying their identity and employment authorization are applicable to any hiring in the United States on or after November 6, 1986 (the effective date of the prohibitions). *See* 8 CFR 274a.7; *see also* 8 CFR 274a.1(c). Although the provisions of section 274A do not apply in the CNMI until the transition period effective date, as of that date they will apply as stated in the INA. Therefore, Form I–9 requirements, using Form I–9 CNMI, should apply to hiring in the CNMI actually conducted on or after the transition program effective date.

The current provision at 8 CFR 274a.7 provides that the civil and criminal penalties associated with violating the

[4] CNMI Public Law 15–108 Sec. 4925. It is DHS' understanding that cards provided to immediate relatives, aliens given refugee protection, or others with unrestricted work authorization have red bands, and cards provided to aliens authorized to work with a specific employer have blue bands. For this reason, the rule specifies that only red-banded Alien Permit Cards would be acceptable.

[5] CNMI Public Law 15–108 Sec. 4947(f) provides that a ''* * * hearing officer may authorize a foreign national worker to be employed in the Commonwealth on a temporary basis pending a hearing with respect to a labor complaint. A temporary work authorization shall end two (2) business days after the hearing officer's order is issued.''

[6] Under Northern Mariana Islands Public Law 5–11 Sec. 4, which became effective April 1, 1977, the Resident Commissioner (the highest executive authority of the Government of the Northern Mariana Islands at the time appointed by the Secretary of the Interior) was authorized to issue permanent identification cards to persons granted permanent residence status pursuant to the provisions of Northern Mariana Islands Public Law 5–11. Northern Mariana Islands Public Law 5–11, however, was repealed in 1981 by CNMI Public Law 2–17. Public Law 2–17, Sec. 2 preserved the rights and status of persons who were granted or applied for permanent residency status pursuant to prior Northern Mariana Islands Public Law 5–11.

employment authorization requirements or knowingly continuing to employ unauthorized aliens will not apply to hires on or before November 6, 1986. To make the necessary conforming amendments to the current regulations, this rule amends 8 CFR 274a.7 to recognize that the penalties will not apply to hires in the CNMI prior to the transition program effective date. This rule would preclude application of these penalties to CNMI employers for potential employment authorization documentation violations committed after November 28, 2009 with respect to hires occurring before November 28, 2009. Therefore, under this rule, the employment authorization documentation requirements and associated penalties apply to any new hiring in the CNMI on or after November 28, 2009; a CNMI employer is not subject to penalties if it does not complete the Form I–9 CNMI for an employee continuing in his or her employment. *See* 8 CFR 274a.7.

This rule does not, however, provide a safe harbor to CNMI employers with knowledge that employees hired prior to the transition program effective date are unauthorized for employment. For this reason, the rule does not amend 8 CFR 274a.3, which provides that an employer is in violation of section 274A if it continues the employment of any alien hired on or after November 6, 1986, knowing that the employee is or has become unauthorized to be employed with respect to that employment. Although a Form I–9 CNMI is not required for employees continuing in their employment on the transition program effective date, DHS does not believe that CNMI employers should continue the employment of an individual on or after the transition date if they know that the individual is unauthorized to work. In particular, exempting CNMI employers from liability for ignoring expiration of CNMI work authorizations during the grandfather clause period would permit them to continue the employment of an alien worker during the period between expiration of his or her work authorizations (a date which, under the CNMI labor permitting system, is known to the employer) and the end of the grandfather period.

As described in 8 CFR 274a.3, the continuing employment prohibition applies to an employer who continues the employment of an alien hired after November 6, 1986, knowing that the employee is or has become an unauthorized alien with respect to that employment. This provision applies in the CNMI to impose penalties on an employer who, on or after the transition program effective date, knowingly employs an unauthorized alien hired after November 6, 1986, regardless whether a Form I–9 CNMI is required to be completed on the employee (which it would not be unless the hire was on or after the transition program effective date). An employee who is employed under a valid ''grandfathered'' grant of CNMI work authorization during the first two years of the transition period is not an ''unauthorized alien,'' because the employee would be authorized by DHS under the amendments to 8 CFR 274a.l2 also made by this rule. Rather, the violation would occur if the employer knew that the employee's grandfathered work authorization grant had expired, but continued the employment anyway.

4. Contracting for Labor or Services

If a person or entity has entered into a contract for the labor or services of an individual, the action is not necessarily considered a ''hire'' triggering section 274A of the Act, 8 U.S.C. 1324a, including the Form I–9 requirements. However, the law provides that if the person or entity uses a contract entered, renegotiated, or extended after November 6, 1986 to obtain the labor or services of an alien knowing that the alien is unauthorized for employment in the United States with respect to such labor or services, the person or entity will be considered to have knowingly hired the individual in violation of section 274A(a)(4) of the Act, 8 U.S.C. 1324a(a)(4). This provision is implemented in the current regulations at 8 CFR 274a.5 and in the definition of ''hire'' at 8 CFR 274a.1(c). This rule amends these provisions to provide that they are applicable in the CNMI to contracts entered into, renegotiated, or extended on or after the transition program effective date. *See* 8 CFR 274a.5 and 274a.1(c). DHS believes that amendments to these provisions to cover actions occurring in the CNMI on or after section 274A becomes applicable will avoid retroactive application of the law to the CNMI.

F. Employment Authorization of Aliens With Employment Authorization Granted by the CNMI

In order to conform the DHS work authorization regulations to the previously discussed ''grandfather clause'' authorizing employment for up to two years after the transition program effective date, this rule adds a new classification of CNMI aliens to the list of alien classifications authorized for employment incident to status with a specific employer. *See* new 8 CFR 274a.12(b)(24). Such work authorization is limited to employment in the CNMI only, and within the time limitations set by the Covenant Act sec. 6(e)(2) (added by CNRA sec. 702(a)). DHS determined that it would be most reasonable to include this class of CNMI aliens within the list of alien classifications authorized to work incident to status with a specific employer since most aliens in the CNMI are granted employer-specific work authorization under CNMI law. However, some aliens are granted unrestricted work authorization. Therefore, this rule includes a distinction within new 8 CFR 274a.12(b)(24) to account for aliens with employer-specific work authorization.

Employers continuing the employment of aliens with CNMI work authorization under the grandfather clause will not be required to complete a Form I–9 CNMI for these employees on the transition program effective date because the Form I–9 requirements apply only to hiring on or after the transition program effective date, and not continuing employment. Unless they are permitted to change employers under their CNMI work authorization, most aliens with employer-specific CNMI work authorization will need to continue their employment with the same employer on or after the transition program effective date to be deemed employment-authorized under the grandfather clause. As provided in 8 CFR 274a.12(b)(24), employees who are authorized by the CNMI as of the transition program effective date to change employers may do so, whether the approval to change is employer-specific or in the form of unrestricted work authorization. For aliens with unrestricted CNMI work authorization or who are permitted to change employers, Forms I–9 CNMI will need to be completed for hires on or after the transition program effective date.

G. Technical Changes

This rule corrects an error in 8 CFR 217.4(a)(1) and (b)(1). These provisions provide for determinations of inadmissibility and deportability with respect to aliens arriving to the United States under the Visa Waiver Program, codified in section 217 of the INA, 8 U.S.C. 1187. Both paragraphs (a)(1) and (b)(1) in 8 CFR 217.4 require aliens seeking admission to the United States under the Visa Waiver Program who apply for asylum to be referred to the immigration judge for a proceeding under 8 CFR 208.2(b)(1) and (b)(2). However, the cross references to 8 CFR 208.2(b)(1) and (b)(2) are incorrect. The provision at 8 CFR 208.2(b) describes the general jurisdiction of the Immigration Court over asylum

applications and does not contain paragraphs (b)(1) and (b)(2). The provisions to which the cross references should apply are the provisions applicable to aliens not entitled to removal proceedings under section 240 of the INA, 8 U.S.C. 1229, with respect to applications for asylum and withholding of removal filed on or after April 1, 1997. The applicable provisions are 8 CFR 208.2(c)(1) and (c)(2), which this rule is amending by including a discussion of aliens arriving in the CNMI before January 1, 2015. To correct the error in 8 CFR 217.4(a)(1) and (b)(1), this rule replaces the reference to 8 CFR 208.2(b)(1) and (2) with a reference to 8 CFR 208.2(c)(1) and (c)(2). *See* new 8 CFR 217.4(a)(1) and (b)(1).

This rule also corrects an error in 8 CFR 208.1(a) and 8 CFR 1208.1(a). These provisions generally reference applicability of section 208 of the INA, 8 U.S.C. 1158. Both paragraphs reference motions to reopen and reconsider under section 240(c) of the INA, 8 U.S.C. 1229, and currently include references to sections 240(c)(5) and (6) of the INA, 8 U.S.C. 1229. However, pursuant to section 101(d)(1) of the REAL ID Act of 2005, Public Law 109–13, the provisions dealing with motions to reconsider and reopen previously codified at sections 240(c)(5) and (6) of the INA, 8 U.S.C. 1229, were re-designated as sections 240(c)(6) and (7) of the INA, 8 U.S.C. 1229. To correct this error in 8 CFR 208.1(a) and 8 CFR 1208.1(a), this rule replaces references to sections 240(c)(5) and (6) of the INA, 8 U.S.C. 1229, with references to sections 240(c)(6) and (7) of the INA, 8 U.S.C. 1229. *See* 8 CFR 208.1(a)(1) and 1208.1(a)(1).

In addition to the changes being addressed in this rule, DOJ recognizes the need to make further conforming changes updating and harmonizing the EOIR provisions at chapter V to take account of various other recent conforming revisions already made by DHS to 8 CFR chapter I, particularly sections 212.0, 212.1, 215.1, and 235.5. *See* 74 FR 2834 (Jan. 16, 2009), as revised, 74 FR 25388 (May 28, 2009); 73 FR 18384 (Apr. 3, 2008). DOJ plans to thoroughly review these provisions to determine whether it will retain these provisions or, in a future rulemaking, make further changes to delete provisions from the corresponding EOIR regulations (sections 1212.1, 1215.1, and 1235.5) that have been determined to be no longer within the jurisdiction of the Attorney General and do not need to be restated in the DOJ regulations. DOJ expects that such a future rulemaking may address other recent revisions made by DHS as part of the recent DHS interim rule published at 74 FR 26933 (June 5, 2009). Although such changes are not being incorporated into the present rule (which is more specifically focused on the CNMI), DOJ welcomes public comment with regard to these planned revisions.

V. Regulatory Requirements

A. Administrative Procedure Act

The Administrative Procedure Act (APA) provides that an agency may dispense with notice and comment rulemaking procedures when an agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' *See* 5 U.S.C. 553(b)(B). For reasons discussed below, DHS and DOJ find pre-promulgation notice and comment for this rule to be impracticable, unnecessary, and contrary to the public interest.

As noted earlier, the CNRA amends both the INA and the Covenant Act to extend U.S. immigration laws to the CNMI. These changes become effective on the transition program effective date, which is November 28, 2009. Because this rulemaking simply conforms the regulations with the applicable statute, notice and comment procedures are ''unnecessary,'' and the ''good cause'' exception to the APA's notice-and-comment requirement, see 5 U.S.C. 553(b)(B), therefore is applicable. *See, e.g., Gray Panthers Advocacy Comm.* v. *Sullivan,* 936 F.2d 1284, 1290–92 (D.C. Cir. 1991) (regulations that ''either restate or paraphrase the detailed requirements'' of a self-executing statute do not require notice and comment); *Komjathy* v. *Nat'l Transp. Safety Bd.,* 832 F.2d 1294, 1296 (D.C. Cir. 1987) (per curiam) (regulation that ''merely reiterates the statutory language'' does not require notice and comment); *Nat'l Customs Brokers & Forwarders Ass'n* v. *United States,* 59 F.3d 1219, 1223–24 (Fed. Cir. 1995) (notice and comment unnecessary where Congress directed agency to change regulations and public would benefit from amendments).

Furthermore, given the short timeframe available to develop the complex regulatory scheme necessary to ensure a smooth transition of the CNMI to the U.S. federal immigration system, the ''good cause'' exception also is applicable because it would be ''impracticable'' and ''unnecessary,'' 5 U.S.C. 553(b)(B), for the Departments to delay implementation of this rule to first consider public comment. Under the APA, an agency is authorized to forego notice and comment, in emergency situations, or where ''the delay created by the notice and comment requirements would result in serious damage to important interests.'' *Woods Psychiatric Institute* v. *United States,* 20 Cl. Ct. 324, 333 (Cl. Ct. 1990), *aff'd,* 925 F.2d 1454 (Fed. Cir. 1991). ''[W]hen there is a lack of specific and immediate guidance from the agency that would create confusion, economic harm, and disruption, not only to the participants of the program, who are forced to rely on antiquated standards, but would also extend to consumers in general, the good cause exception is a proper solution to ameliorate this expected harm.'' *Woods,* 20 Cl. Ct. at 333; *see also, e.g., N. Am. Coal Corp.* v. *Director, Office of Workers' Compensation Programs, U.S. Dep't of Labor,* 854 F.2d 386, 389 (10th Cir. 1988) (finding good cause where delay would cause ''real harm''); *Philadelphia Citizens in Action* v. *Schweiker,* 669 F.2d 877, 886 (3d Cir. 1982) (finding good cause in light of statutory deadline); *Council of S. Mountains, Inc.* v. *Donovan,* 653 F.2d 573, 575 (D.C. Cir. 1981) (per curiam) (finding good cause where agency had insufficient time to follow notice-and-comment procedures despite working diligently to meet deadline); *United States* v. *Hernandez,* 615 F. Supp. 2d 601, 613 (E.D. Mich. 2009) (finding good cause where agency acted ''to prevent a delay in implementation that could jeopardize the safety of the public and thwart the purposes of'' the statute). Under the CNRA, the transition will begin on November 28, 2009, even if regulations to guide the CNMI are not yet in place. Thus, the failure to have an effective interim regulation in place by the beginning of the transition period would serve only to confuse and harm the CNMI and aliens residing in the CNMI following the transition. This would have an adverse impact on the CNMI economy in direct contrast to congressional intent under the CNRA and would be contrary to an important public interest.

Although DOJ and DHS find that good cause exists under 5 U.S.C. 553(b) to issue this rule as an interim rule, DOJ and DHS nevertheless invite written comments on this interim rule and will consider those comments in the development of a final rule in this action.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, 110 Stat. 847, 857, requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small

organizations during the development of their rules. When an agency invokes the good cause exception under the Administrative Procedure Act to make changes effective through an interim final rule, the RFA does not require an agency to prepare a regulatory flexibility analysis. *See* 5 U.S.C. 603(a). This rule makes changes for which notice and comment are not necessary, and, accordingly, DHS and DOJ have not prepared a regulatory flexibility analysis.

C. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, 109 Stat. 48, requires agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector if the rule will result in expenditures exceeding $100 million (adjusted for inflation) in any one year. 2 U.S.C. 1532(a). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. The CNRA will cause some changes for the CNMI government since they will no longer be implementing their own immigration, foreign worker, and border security program. However, the costs of administering that program will no longer be incurred by the CNMI government. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the SBREFA. *See* 5 U.S.C. 804(2). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

E. Executive Order 12866

This rule has been designated as significant under Executive Order 12866. Therefore, an analysis of the costs and benefits of this rule has been performed and the rule has been reviewed by the Office of Management and Budget.

This rule contains only such regulations as are required to provide that U.S. immigration law will apply to the CNMI. This rule establishes provisions necessary for the application of the INA to the CNMI, and updates definitions and clarifies existing DHS and DOJ regulations in areas that may prove confusing or be in conflict with how they are to be applied after the INA takes effect in the CNMI. These statutory requirements, including imposition of any applicable application, petition, or user fees, would mostly be self-implementing in the absence of this regulatory action. The stated goals of the CNRA are to ensure effective border control procedures, to properly address national security and homeland security concerns by extending U.S. immigration law to the CNMI, and to maximize the CNMI's potential for future economic and business growth. While those goals are expected to be partly facilitated by the changes made in this rule, they are general and qualitative in nature. There are no specific changes made by this rule with sufficiently identifiable direct or indirect economic impacts so as to be quantified. There may be some inconvenience costs associated with the need for residents of the CNMI to adjust to application of the INA; however, those costs are independent of and would occur regardless of this rule. The CNRA mandates a 5-year transition, and provides for other programs that will mitigate the economic effects of the CNRA and allow for a less turbulent transition for the CNMI. The regulations for those programs are being implemented and their effects have been analyzed under separate rulemakings. This rule is limited to harmonization of DHS, DOJ, and CNMI rules and has no economic costs.

F. Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat. 163, all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a regulatory action. The collections of information encompassed within this rule have been submitted to the OMB for review in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

The United States Citizenship and Immigration Services is requiring a new Form I–9 CNMI, to collect the information required to document that each new employee (both citizen and noncitizen) hired in the Commonwealth of the Northern Mariana Islands (CNMI) after November 27, 2009, is authorized to work in the CNMI. Since this is an interim rule, this information collection has been submitted and approved by OMB under the emergency review and clearance procedures covered under the PRA. *See* 44 U.S.C. 3507(j). During the first 30 days, USCIS is requesting comments on this information collection until November 27, 2009. When submitting comments on this information collection, your comments should address one or more of the following four points.

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond,

(5) Including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

a. *Type of information collection:* New information collection.

b. *Abstract:* This collection is necessary to document that each new employee (both citizen and noncitizen)

hired in the Commonwealth of the Northern Mariana Islands (CNMI) after November 27, 2009, is authorized to work in the CNMI.

c. *Title of Form/Collection:* CNMI Employment Eligibility Verification.

d. *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–9 CNMI; U.S. Citizenship and Immigration Services.

e. *Affected public who will be asked or required to respond: Primary:* Individuals and Households.

f. *An estimate of the total number of respondents:* 1,700 respondents.

g. *Number of Responses per Respondent:* 1.

h. *Total Annual Responses:* 1,700.

i. *Hours per Response:* 9 minutes or .15 hours per response, and 3 minutes or .05 per response for recordkeeping.

j. *Total Annual Reporting Burden:* 340 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden may be submitted to the Department of Homeland Security, USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529–2210.

List of Subjects

8 CFR Parts 1 and 1001

Aliens, Reporting and recordkeeping requirements.

8 CFR Parts 208 and 1208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Parts 209 and 1209

Aliens, Immigration, Refugees.

8 CFR Parts 212 and 1212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 217

Aliens, Reporting and recordkeeping requirements.

8 CFR Parts 235 and 1235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Parts 245 and 1245

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 286

Air carriers, Immigration, Maritime carriers, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Department of Homeland Security

8 CFR Chapter I

■ Accordingly, chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 1—DEFINITIONS

■ 1. The authority citation for part 1 is revised to read as follows:

Authority: 8 U.S.C. 1101; 8 U.S.C. 1103; 5 U.S.C. 301; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); Title VII of Public Law 110–229.

■ 2. Section 1.1 is amended by adding a new paragraph (bb) to read as follows:

§ 1.1 Definitions.

* * * * *

(bb) The term *transition program effective date* as used with respect to extending the immigration laws to the Commonwealth of the Northern Mariana Islands means November 28, 2009.

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 3. The authority citation for part 208 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Public Law 110–229; 8 CFR part 2.

■ 4. Section 208.1(a) is revised to read as follows:

§ 208.1 General.

(a) *Applicability.* (1) *General.* Unless otherwise provided in this chapter I, this subpart A shall apply to all applications for asylum under section 208 of the Act or for withholding of deportation or withholding of removal under section 241(b)(3) of the Act, or under the Convention Against Torture, whether before an asylum officer or an immigration judge, regardless of the date of filing. For purposes of this chapter I, withholding of removal shall also mean withholding of deportation under section 243(h) of the Act, as it appeared prior to April 1, 1997, except as provided in § 208.16(d). Such applications are referred to as ''asylum applications.'' The provisions of this part 208 shall not affect the finality or validity of any decision made by a district director, an immigration judge, or the Board of Immigration Appeals in any such case prior to April 1, 1997. No asylum application that was filed with a district director, asylum officer, or immigration judge prior to April 1, 1997, may be reopened or otherwise reconsidered under the provisions of this part 208 except by motion granted in the exercise of discretion by the Board of Immigration Appeals, an immigration judge, or an asylum officer for proper cause shown. Motions to reopen or reconsider must meet the requirements of sections 240(c)(6) and (c)(7) of the Act, and 8 CFR parts 3 and 103, where applicable.

(2) *Commonwealth of the Northern Mariana Islands.* The provisions of this subpart A shall not apply prior to January 1, 2015, to an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands seeking to apply for asylum. No application for asylum may be filed prior to January 1, 2015, pursuant to section 208 of the Act by an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands. Effective on the transition program effective date, the provisions of this subpart A shall apply to aliens physically present in or arriving in the CNMI with respect to withholding of removal under section 241(b)(3) of the Act and withholding and deferral of removal under the Convention Against Torture.

* * * * *

■ 5. Section 208.2 is amended by:

■ a. Revising paragraphs (c)(1)(iii) and (iv);

■ b. Removing the word ''or'' at the end of paragraph; (c)(1)(v);

■ c. Removing the period at the end of paragraph (c)(1)(vi), and adding a semicolon in its place; and by

■ d. Adding new paragraphs (c)(1)(vii) and (viii).

The revisions and additions read as follows:

§ 208.2 Jurisdiction.

* * * * *

(c) * * *

(1) * * *

(iii) An alien who is an applicant for admission pursuant to the Visa Waiver

Program under section 217 of the Act, except that if such an alien is an applicant for admission to the Commonwealth of the Northern Mariana Islands, then he or she shall not be eligible for asylum prior to January 1, 2015;

(iv) An alien who was admitted to the United States pursuant to the Visa Waiver Program under section 217 of the Act and has remained longer than authorized or has otherwise violated his or her immigration status, except that if such an alien was admitted to the Commonwealth of the Northern Mariana Islands, then he or she shall not be eligible for asylum in the Commonwealth of the Northern Mariana Islands prior to January 1, 2015;

* * * * *

(vii) An alien who is an applicant for admission to Guam or the Commonwealth of the Northern Mariana Islands pursuant to the Guam-CNMI Visa Waiver Program under section 212(l) of the Act, except that if such an alien is an applicant for admission to the Commonwealth of the Northern Mariana Islands, then he or she shall not be eligible for asylum prior to January 1, 2015; or

(viii) An alien who was admitted to Guam or the Commonwealth of the Northern Mariana Islands pursuant to the Guam-CNMI Visa Waiver Program under section 212(l) of the Act and has remained longer than authorized or has otherwise violated his or her immigration status, except that if such an alien was admitted to the Commonwealth of the Northern Mariana Islands, then he or she shall not be eligible for asylum in the Commonwealth of the Northern Mariana Islands prior to January 1, 2015.

* * * * *

■ 6. Section 208.4 is amended by adding three new sentences to the end of paragraph (a)(2)(ii) to read as follows:

§ 208.4 Filing the application.

(a) * * *

(2) * * *

(ii) * * * For aliens present in or arriving in the Commonwealth of the Northern Mariana Islands, the 1-year period shall be calculated from either January 1, 2015, or from the date of the alien's last arrival in the United States (including the Commonwealth of the Northern Mariana Islands), whichever is later. No period of physical presence in the Commonwealth of the Northern Mariana Islands prior to January 1, 2015, shall count toward the 1-year period. After November 28, 2009, any travel to the Commonwealth of the Northern Mariana Islands from any other State shall not re-start the calculation of the 1-year period.

* * * * *

■ 7. Section 208.5 is amended by:

■ a. Revising the section heading;

■ b. Revising paragraph (a); and by

■ c. Adding a new paragraph (b)(1)(iii).

The revisions and addition read as follows:

§ 208.5 Special duties toward aliens in custody of DHS.

(a) *General.* When an alien in the custody of DHS requests asylum or withholding of removal, or expresses a fear of persecution or harm upon return to his or her country of origin or to agents thereof, DHS shall make available the appropriate application forms and shall provide the applicant with the information required by section 208(d)(4) of the Act, except in the case of an alien who is in custody pending a credible fear determination under 8 CFR 208.30 or a reasonable fear determination pursuant to 8 CFR 208.31. Although DHS does not have a duty in the case of an alien who is in custody pending a credible fear or reasonable fear determination under either 8 CFR 208.30 or 8 CFR 208.31, DHS may provide the appropriate forms, upon request. Where possible, expedited consideration shall be given to applications of detained aliens. Except as provided in paragraph (c) of this section, such alien shall not be excluded, deported, or removed before a decision is rendered on his or her asylum application. Furthermore, except as provided in paragraph (c) of this section, an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands shall not be excluded, deported, or removed before a decision is rendered on his or her application for withholding of removal pursuant to section 241(b)(3) of the Act and withholding of removal under the Convention Against Torture. No application for asylum may be filed prior to January 1, 2015, under section 208 of the Act by an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands.

(b) * * *

(1) * * *

(iii) An alien crewmember physically present in or arriving in the Commonwealth of the Northern Mariana Islands can request withholding of removal pursuant to section 241(b)(3) of the Act and withholding of removal under the Convention Against Torture. However, such an alien crewmember is not eligible to request asylum pursuant to section 208 of the Act prior to January 1, 2015.

* * * * *

■ 8. Section 208.30 is amended by:

■ a. Revising paragraph (a); and by

■ b. Adding a sentence at the end of paragraph (e)(2).

The revision and addition read as follows:

§ 208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.

(a) *Jurisdiction.* The provisions of this subpart B apply to aliens subject to sections 235(a)(2) and 235(b)(1) of the Act. Pursuant to section 235(b)(1)(B) of the Act, DHS has exclusive jurisdiction to make credible fear determinations, and the Executive Office for Immigration Review has exclusive jurisdiction to review such determinations. Except as otherwise provided in this subpart B, paragraphs (b) through (g) of this section are the exclusive procedures applicable to credible fear interviews, determinations, and reviews under section 235(b)(1)(B) of the Act. Prior to January 1, 2015, an alien present in or arriving in the Commonwealth of the Northern Mariana Islands is ineligible to apply for asylum and may only establish eligibility for withholding of removal pursuant to section 241(b)(3) of the Act or withholding or deferral of removal under the Convention Against Torture.

* * * * *

(e) * * *

(2) * * * However, prior to January 1, 2015, in the case of an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands, the officer may only find a credible fear of persecution if there is a significant possibility that the alien can establish eligibility for withholding of removal pursuant to section 241(b)(3) of the Act.

* * * * *

PART 209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

■ 9. The authority citation for part 209 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1157, 1158, 1159, 1228, 1252, 1282; Title VII of Public Law 110–229; 8 CFR part 2.

■ 10. Section 209.2 is amended by:

■ a. Revising paragraph (a)(1) introductory text; and

■ b. Adding paragraph (a)(3).

The revision and addition read as follows:

§ 209.2 Adjustment of status of alien granted asylum.

* * * * *

(a) * * *

(1) Except as provided in paragraph (a)(2) or (a)(3) of this section, the status of any alien who has been granted asylum in the United States may be adjusted by USCIS to that of an alien lawfully admitted for permanent residence, provided the alien:

* * * * *

(3) No alien arriving in or physically present in the Commonwealth of the Northern Mariana Islands may apply to adjust status under section 209(b) of the Act in the Commonwealth of the Northern Mariana Islands prior to January 1, 2015.

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 11. The authority citation for part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1255; 8 U.S.C. 1185 note (section 7209 of Public Law 108–458; Title VII of Public Law 110–229; 8 CFR part 2.

■ 12. Section 212.1 is amended by revising paragraphs (e)(4)(i) and (q)(4)(i), to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(e) * * *

(4) * * *

(i) Adjustment of status to that of a temporary resident or, except as provided by section 245(i) of the Act or as an immediate relative as defined in section 201(b) of the Act, to that of a lawful permanent resident.

* * * * *

(q) * * *

(4) * * *

(i) Adjustment of status to that of a temporary resident or, except as provided by section 245(i) of the Act or as an immediate relative as defined in section 201(b) of the Act, to that of a lawful permanent resident.

* * * * *

PART 214—NONIMMIGRANT CLASSES

■ 13. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Public Law 104–208, 110 Stat. 3009–708; Public Law 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; Title VII of Public Law 110–229; 8 CFR part 2.

■ 14. Section 214.7 is amended by:

■ a. Revising the section heading;

■ b. Revising paragraph (a)(3);

■ c. Revising the first sentence of paragraph (a)(4)(i) introductory text; and by

■ d. Revising paragraph (b).

The revisions read as follows:

§ 214.7 Habitual residence in the territories and possessions of the United States and consequences thereof.

(a) * * *

(3) *Territories and possessions of the United States* means all territories and possessions of the United States to which the Act applies, including those commonwealths of the United States that are not States. It does not include American Samoa, as long as the Act does not apply to it.

(4)(i) *Habitual resident* means a citizen of the FAS who has been admitted to a territory or possession of the United States (other than American Samoa, as long as the Act is not applicable to it) pursuant to section 141(a) of the Compacts and who occupies in such territory or possession a habitual residence as that term is defined in section 461 of the Compacts, namely a place of general abode or a principal, actual dwelling place of a continuing or lasting nature. * * *

* * * * *

(b) *Where do these rules regarding habitual residence apply?* The rules in this section apply to habitual residents living in a territory or possession of the United States to which the Act applies. Those territories and possessions are at present Guam, the Commonwealth of Puerto Rico, the American Virgin Islands, and the Commonwealth of the Northern Mariana Islands. These rules do not apply to habitual residents living in American Samoa as long as the Act does not extend to it. These rules are not applicable to habitual residents living in the fifty States or the District of Columbia.

* * * * *

■ 15. Section 214.11 is amended by:

■ a. Revising the definition of ''United States'' in paragraph (a);

■ b. Revising paragraph (b)(2);

■ c. Revising the first sentence in paragraph (g) introductory text; and by

■ d. Revising paragraph (g)(1).

The revisions read as follows:

§ 214.11 Alien victims of severe forms of trafficking in persons.

(a) * * *

* * * * *

United States means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

* * * * *

(b) * * *

(2) Is physically present in the United States, American Samoa, or at a port-of-entry thereto, on account of such trafficking in persons;

* * * * *

(g) *Physical presence on account of trafficking in persons.* The applicant must establish that he or she is physically present in the United States, American Samoa, or at a port-of-entry thereto on account of such trafficking, and that he or she is a victim of a severe form of trafficking in persons that forms the basis for the application. * * *

(1) *In general.* The evidence and statements included with the application must state the date and place (if known) and the manner and purpose (if known) for which the applicant entered the United States, American Samoa, or a port-of-entry thereto, and demonstrate that the applicant is present now on account of the applicant's victimization as described in paragraph (f) of this section and section 101(a)(15)(T)(i)(I) of the Act.

* * * * *

■ 16. Section 214.14 is amended by revising paragraph (a)(11) to read as follows:

§ 214.14 Alien victims of certain qualifying criminal activity.

(a) * * *

(11) *Territories and Possessions of the United States* means American Samoa, Swains Island, Bajo Nuevo (the Petrel Islands), Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Navassa Island, Palmyra Atoll, Serranilla Bank, and Wake Atoll.

* * * * *

PART 217—VISA WAIVER PROGRAM

■ 17. The authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

■ 18. Section 217.4 is amended by revising the last sentence in paragraph (a)(1) and the last sentence in paragraph (b)(1) to read as follows:

§ 217.4 Inadmissibility and deportability.

(a) * * *

(1) * * *

(1) * * * Such refusal and removal shall be made at the level of the port director or officer-in-charge, or an officer acting in that capacity, and shall be effected without referral of the alien to an immigration judge for further inquiry, examination, or hearing, except that an alien who presents himself or herself as an applicant for admission under section 217 of the Act and applies for asylum in the United States must be issued a Form I–863, Notice of Referral to Immigration Judge, for a proceeding in accordance with 8 CFR 208.2(c)(1) and (c)(2).

* * * * *

(b) * * *

(1) * * * Such removal shall be determined by the district director who has jurisdiction over the place where the alien is found, and shall be effected without referral of the alien to an immigration judge for a determination of deportability, except that an alien who was admitted as a Visa Waiver Program visitor who applies for asylum in the United States must be issued a Form I–863 for a proceeding in accordance with 8 CFR 208.2(c)(1) and (c)(2).

* * * * *

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 19. The authority citation for part 235 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E. O. 13323, 69 FR 241, 3 CFR, 2003 Comp., p. 278), 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, 1731–32; Title VII of Public Law 110–229; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458).

■ 20. Section 235.6 is amended by revising paragraphs (a)(1)(ii) and (iii) to read as follows:

§ 235.6 Referral to immigration judge.

(a) * * *

(1) * * *

(ii) If an asylum officer determines that an alien in expedited removal proceedings has a credible fear of persecution or torture and refers the case to the immigration judge for consideration of the application for asylum, except that, prior to January 1, 2015, an alien arriving in the Commonwealth of the Northern Mariana Islands is not eligible to apply for asylum but the immigration judge may consider eligibility for withholding of removal pursuant to section 241(b)(3) of the Act or withholding or deferral of removal under the Convention Against Torture.

(iii) If the immigration judge determines that an alien in expedited removal proceedings has a credible fear of persecution or torture and vacates the expedited removal order issued by the asylum officer, except that, prior to January 1, 2015, an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands is not eligible to apply for asylum but an immigration judge may consider eligibility for withholding of removal pursuant to section 241(b)(3) of the Act or withholding or deferral of removal under the Convention Against Torture.

* * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

■ 21. The authority citation for part 245 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; section 202, Public Law 105–100, 111 Stat. 2160, 2193; section 902, Public Law 105–277, 112 Stat. 2681; Title VII of Public Law 110–229; 8 CFR part 2.

■ 22. Section 245.1(b)(7) is revised to read as follows:

§ 245.1 Eligibility.

* * * * *

(b) * * *

(7) Any alien admitted as a visitor under the visa waiver provisions of 8 CFR 212.1(e) or (q), other than an immediate relative as defined in section 201(b) of the Act;

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 23. The authority citation for part 274a is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; Title VII of Public Law 110–229; 8 CFR part 2.

■ 24. Section 274a.1 is amended by revising paragraph (c) to read as follows:

§ 274a.1 Definitions.

* * * * *

(c) The term *hire* means the actual commencement of employment of an employee for wages or other remuneration. For purposes of section 274A(a)(4) of the Act and 8 CFR 274a.5, a hire occurs when a person or entity uses a contract, subcontract, or exchange entered into, renegotiated, or extended after November 6, 1986 (or, with respect to the Commonwealth of the Northern Mariana Islands, after the transition program effective date as defined in 8 CFR 1.1), to obtain the labor of an alien in the United States, knowing that the alien is an unauthorized alien;

* * * * *

■ 25. Section 274a.2 is amended by adding new paragraph (b)(1)(v)(D) to read as follows:

§ 274a.2 Verification of employment eligibility.

* * * * *

(b) * * *

(1) * * *

(v) * * *

(D) The following are acceptable documents to establish both identity and employment authorization in the Commonwealth of the Northern Mariana Islands only, for a two-year period starting from the transition program effective date (as defined in 8 CFR 1.1), in addition to those documents listed in paragraph (b)(1)(v)(A) of this section:

(1) In the case of an alien with employment authorization in the Commonwealth of the Northern Mariana Islands incident to status for a period of up to two years following the transition program effective date that is unrestricted or otherwise authorizes a change of employer:

(i) The unexpired foreign passport and an Alien Entry Permit with red band issued to the alien by the Department of Labor of the Commonwealth of the Northern Mariana Islands before the transition program effective date, as long as the period of employment authorization has not yet expired, or

(ii) An unexpired foreign passport and temporary work authorization letter issued by the Department of Labor of the Commonwealth of the Northern Mariana Islands before the transition program effective date, and containing the name and photograph of the individual, as long as the period of employment authorization has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Temporary Work Authorization letter;

(iii) An unexpired foreign passport and a permanent resident card issued by the Commonwealth of the Northern Mariana Islands.

(*2*) [Reserved]

* * * * *

■ 26. Section 274a.5 is revised to read as follows:

§ 274a.5 Use of labor through contract.

Any person or entity who uses a contract, subcontract, or exchange entered into, renegotiated, or extended after November 6, 1986 (or, with respect to the Commonwealth of the Northern Mariana Islands, after the transition

program effective date as defined in 8 CFR 1.1), to obtain the labor or services of an alien in the United States knowing that the alien is an unauthorized alien with respect to performing such labor or services, shall be considered to have hired the alien for employment in the United States in violation of section 274A(a)(1)(A) of the Act.

■ 27. Section 274a.7 is amended by:
■ a. Revising the section heading;
■ b. Revising paragraph (a); and by
■ c. Revising paragraph (b) introductory text.

The revisions read as follows:

§ 274a.7 Pre-enactment provisions for employees hired prior to November 7, 1986 or in the CNMI prior to the transition program effective date.

(a) For employees who are continuing in their employment and have a reasonable expectation of employment at all times (as set forth in 8 CFR 274a.2(b)(1)(viii)), except those individuals described in 8 CFR 274a.2(b)(1)(viii)(A)(*7*)(*iii*) and (b)(1)(viii)(A)(*8*):

(1) The penalty provisions set forth in section 274A(e) and (f) of the Act for violations of sections 274A(a)(1)(B) and 274A(a)(2) of the Act shall not apply to employees who were hired prior to November 7, 1986.

(2) The penalty provisions set forth in section 274A(e) and (f) of the Act for violations of section 274A(a)(1)(B) of the Act shall not apply to employees who were hired in the CNMI prior to the transition program effective date as defined in 8 CFR 1.1.

(b) For purposes of this section, an employee who was hired prior to November 7, 1986 (or if hired in the CNMI, prior to the transition program effective date) shall lose his or her pre-enactment status if the employee:

* * * * *

■ 28. Section 274a.12 is amended by:
■ a. Removing the word ''or'' at the end of paragraph (b)(20);
■ b. Removing the period at the end of paragraph (b)(21) and adding a '';'' in its place;
■ c. Removing the period at the end of paragraph (b)(23), and adding a ''; or'' in its place; and by
■ d. Adding a new paragraph (b)(24), to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(b) * * *

(24) An alien who is authorized to be employed in the Commonwealth of the Northern Mariana Islands for a period of up to 2 years following the transition program effective date, under section 6(e)(2) of Public Law 94–241, as added by section 702(a) of Public Law 110–229. Such alien is only authorized to continue in the same employment that he or she had on the transition program effective date as defined in 8 CFR 1.1 until the earlier of the date that is 2 years after the transition program effective date or the date of expiration of the alien's employment authorization, unless the alien had unrestricted employment authorization or was otherwise authorized as of the transition program effective date to change employers, in which case the alien may have such employment privileges as were authorized as of the transition program effective date for up to 2 years.

* * * * *

PART 286—IMMIGRATION USER FEE

■ 29. The authority citation for part 286 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1356; Title VII of Public Law 110–229; 8 CFR part 2.

■ 30. Section 286.1 is amended by:
■ a. Revising paragraph (i); and by
■ b. Revising paragraph (k).

The revisions read as follows:

§ 286.1 Definitions.

* * * * *

(i) *Territories or possessions of the United States* means American Samoa, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway, Swains Island, Palmyra Island, and Wake Island.

* * * * *

(k) *United States,* when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

PART 299—IMMIGRATION FORMS

■ 31. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

■ 32. Section 299.1 is amended in the table by adding Form ''I–9 CNMI'' to the list of prescribed forms in proper alpha/numeric sequence, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
* * * * * * *		
I–9 CNMI	xx–xx–xx	CNMI Employment Eligibility Verification.
* * * * * * *		

■ 33. Section 299.5 is amended in the table by adding the Form ''I–9 CNMI'' in proper alpha/numeric sequence, to read as follows:

§ 299.5 Display of control number.

* * * * *

Form No.	Form title	Currently assigned OMB control No.
* * * * * * *		
I–9 CNMI	CNMI Employment Eligibility Verification	1615–XXXX
* * * * * * *		

Department of Justice

8 CFR Chapter V

■ Accordingly, the Attorney General amends chapter V of title 8 of the Code of Federal Regulations as follows:

PART 1001—DEFINITIONS

■ 34. The authority citation for part 1001 is revised to read as follows:

Authority: 8 U.S.C. 1101; 8 U.S.C. 1103; 5 U.S.C. 301; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); Title VII of Public Law 110–229.

■ 35. Section 1001.1 is amended by:
■ a. Adding and reserving paragraphs (x), (y), (z), and (aa); and by
■ b. Adding a new paragraph (bb), to read as follows:

§ 1001.1 Definitions.

* * * * *

(x) [Reserved]
(y) [Reserved]
(z) [Reserved]
(aa) [Reserved]
(bb) The term *transition program effective date* as used with respect to extending the immigration laws to the Commonwealth of the Northern Mariana Islands means November 28, 2009.

PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 36. The authority citation for part 1208 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Public Law 110–229.

■ 37. Section 1208.1(a) is revised to read as follows:

§ 1208.1 General.

(a) *Applicability.* (1) *In general.* Unless otherwise provided in this chapter V, this subpart A shall apply to all applications for asylum under section 208 of the Act or for withholding of deportation or withholding of removal under section 241(b)(3) of the Act, or under the Convention Against Torture, whether before an asylum officer or an immigration judge, regardless of the date of filing. For purposes of this chapter V, withholding of removal shall also mean withholding of deportation under section 243(h) of the Act, as it appeared prior to April 1, 1997, except as provided in § 1208.16(d). Such applications are hereinafter referred to as ''asylum applications.'' The provisions of this part shall not affect the finality or validity of any decision made by a district director, an immigration judge, or the Board of Immigration Appeals in any such case prior to April 1, 1997. No asylum application that was filed with a district director, asylum officer, or immigration judge prior to April 1, 1997, may be reopened or otherwise reconsidered under the provisions of this part except by motion granted in the exercise of discretion by the Board of Immigration Appeals, an immigration judge, or an asylum officer for proper cause shown. Motions to reopen or reconsider must meet the requirements of sections 240(c)(6) and (c)(7) of the Act, and 8 CFR parts 1003 and 1103, where applicable.

(2) *Commonwealth of the Northern Mariana Islands.* The provisions of this subpart A shall not apply prior to January 1, 2015, to an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands seeking to apply for asylum. No application for asylum may be filed prior to January 1, 2015, pursuant to section 208 of the Act by an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands. Effective on the transition program effective date, the provisions of this subpart A shall apply to aliens physically present in or arriving in the CNMI with respect to withholding of removal under section 241(b)(3) of the Act and withholding and deferral of removal under the Convention Against Torture.

* * * * *

■ 38. Section 1208.2 is amended by:
■ a. Revising paragraphs (c)(1)(iii) and (iv);
■ b. Removing the word ''or'' at the end of paragraph (c)(1)(v);
■ c. Removing the period at the end of paragraph (c)(1)(vi), and adding a semicolon in its place; and by
■ d. Adding new paragraphs (c)(1)(vii) and (viii).

The revisions and additions read as follows:

§ 1208.2 Jurisdiction.

* * * * *

(c) * * *
(1) * * *

(iii) An alien who is an applicant for admission pursuant to the Visa Waiver Program under section 217 of the Act, except that if such an alien is an applicant for admission to the Commonwealth of the Northern Mariana Islands, then he or she shall not be eligible for asylum prior to January 1, 2015;

(iv) An alien who was admitted to the United States pursuant to the Visa Waiver Program under section 217 of the Act and has remained longer than authorized or has otherwise violated his or her immigration status, except that if such an alien was admitted to the Commonwealth of the Northern Mariana Islands, then he or she shall not be eligible for asylum in the Commonwealth of the Northern Mariana Islands prior to January 1, 2015;

* * * * *

(vii) An alien who is an applicant for admission to Guam or the Commonwealth of the Northern Mariana Islands pursuant to the Guam-CNMI Visa Waiver Program under section 212(l) of the Act, except that if such an alien is an applicant for admission to the Commonwealth of the Northern Mariana Islands, then he or she shall not be eligible for asylum prior to January 1, 2015; or

(viii) An alien who was admitted to Guam or the Commonwealth of the Northern Mariana Islands pursuant to the Guam-CNMI Visa Waiver Program under section 212(l) of the Act and has remained longer than authorized or has otherwise violated his or her immigration status, except that if such an alien was admitted to the Commonwealth of the Northern Mariana Islands, then he or she shall not be eligible for asylum in the Commonwealth of the Northern Mariana Islands prior to January 1, 2015.

* * * * *

■ 39. Section 1208.4 is amended by adding three new sentences to the end of paragraph (a)(2)(ii) to read as follows:

§ 1208.4 Filing the application.

(a) * * *

(2) * * *

(ii) * * * For aliens present in or arriving in the Commonwealth of the Northern Mariana Islands, the 1-year period shall be calculated from January 1, 2015, or from the date of the alien's last arrival in the United States (including the Commonwealth of the Northern Mariana Islands), whichever is later. No period of physical presence in the Commonwealth of the Northern Mariana Islands prior to January 1, 2015, shall count toward the 1-year period. After November 28, 2009, any travel to the Commonwealth of the Northern Mariana Islands from any other State shall not re-start the calculation of the 1-year period.

* * * * *

■ 40. Section 1208.5 is amended by:
■ a. Revising the section heading;
■ b. Revising paragraph (a); and by
■ c. Adding a new paragraph (b)(1)(iii).

The revisions and addition read as follows:

§ 1208.5 Special duties toward aliens in custody of DHS.

(a) *General.* When an alien in the custody of DHS requests asylum or withholding of removal, or expresses a fear of persecution or harm upon return to his or her country of origin or to agents thereof, DHS shall make available the appropriate application forms and shall provide the applicant with the information required by section 208(d)(4) of the Act, except in the case of an alien who is in custody pending a credible fear determination under 8 CFR 1208.30 or a reasonable fear determination pursuant to 8 CFR 1208.31. Although DHS does not have a duty in the case of an alien who is in custody pending a credible fear or reasonable fear determination under either 8 CFR 1208.30 or 8 CFR 1208.31, DHS may provide the appropriate forms, upon request. Where possible, expedited consideration shall be given to applications of detained aliens. Except as provided in paragraph (c) of this section, such alien shall not be excluded, deported, or removed before a decision is rendered on his or her asylum application. Furthermore, except as provided in paragraph (c) of this section, an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands shall not be excluded, deported, or removed before a decision is rendered on his or her application for withholding of removal pursuant to section 241(b)(3) of the Act and withholding of removal under the Convention Against Torture. No application for asylum may be filed prior to January 1, 2015, pursuant to section 208 of the Act by an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands.

(b) * * *

(1) * * *

(iii) An alien crewmember physically present in or arriving in the Commonwealth of the Northern Mariana Islands can request withholding of removal pursuant to section 241(b)(3) of the Act and withholding of removal under the Convention Against Torture. However, such an alien crewmember is not eligible to request asylum pursuant to section 208 of the Act prior to January 1, 2015.

* * * * *

■ 41. Section 1208.30 is amended by revising paragraph (a) to read as follows:

§ 1208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.

(a) *Jurisdiction.* The provisions of this subpart B apply to aliens subject to sections 235(a)(2) and 235(b)(1) of the Act. Pursuant to section 235(b)(1)(B), asylum officers have exclusive jurisdiction to make credible fear determinations, and the immigration judges have exclusive jurisdiction to review such determinations. Prior to January 1, 2015, an alien present in or arriving in the Commonwealth of the Northern Mariana Islands is ineligible to apply for asylum and may only establish eligibility for withholding of removal pursuant to section 241(b)(3) of the Act or withholding or deferral of removal under the Convention Against Torture.

* * * * *

PART 1209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

■ 42. The authority citation for part 1209 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1157, 1158, 1159, 1228, 1252, 1282; Title VII of Public Law 110–229.

■ 10. Section 1209.2 is amended by:

■ a. Revising paragraph (a)(1) introductory text; and by

■ b. Adding paragraph (a)(3).

The revision and addition read as follows:

§ 1209.2 Adjustment of status of alien granted asylum.

* * * * *

(a) * * *

(1) Except as provided in paragraph (a)(2) or (a)(3) of this section, the status of any alien who has been granted asylum in the United States may be adjusted to that of an alien lawfully admitted for permanent residence, provided the alien:

* * * * *

(3) No alien arriving in or physically present in the Commonwealth of the Northern Mariana Islands may apply to adjust status under section 209(b) of the Act in the Commonwealth of the Northern Mariana Islands prior to January 1, 2015.

* * * * *

PART 1212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 43. The authority citation for part 1212 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1255; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); Title VII of Public Law 110–229.

■ 44. Section 1212.1 is amended by:

■ a. Revising paragraph (e);

■ b. Adding and reserving paragraph (p); and by

■ c. Adding a new paragraph (q).

The revision and additions read as follows:

§ 1212.1 Documentary requirements for nonimmigrants.

* * * * *

(e) *Aliens entering Guam pursuant to section 14 of Public Law 99–396, ''Omnibus Territories Act'' and 8 CFR 212.1(e).* (1) As provided in 8 CFR 212.1(e), until November 28, 2009, a visa is not required of an alien who is a citizen of a country enumerated in 8 CFR 212.1(e)(3) who:

(i) Is classifiable as a visitor for business or pleasure;

(ii) Is solely entering and staying on Guam for a period not to exceed fifteen days;

(iii) Is in possession of a round-trip nonrefundable and nontransferable transportation ticket bearing a confirmed departure date not exceeding fifteen days from the date of admission to Guam;

(iv) Is in possession of a completed and signed Visa Waiver Information Form (Form I–736);

(v) Waives any right to review or appeal the immigration officer's determination of admissibility at the port of entry at Guam; and

(vi) Waives any right to contest any action for deportation, other than on the basis of a request for asylum.

(2) The DHS regulations for waiver of the visa requirement for aliens entering Guam pursuant to section 14 of Public Law 99–396, prior to November 28, 2009, are set forth at 8 CFR 212.1(e).

(3) [Reserved]

(4) Admission under 8 CFR 212.1(e) renders an alien ineligible for:

(i) Adjustment of status to that of a temporary resident or, except under the provisions of section 245(i) of the Act or as an immediate relative as defined in section 201(b), to that of a lawful permanent resident;

(ii) Change of nonimmigrant status; or

(iii) Extension of stay.

* * * * *

(q) *Aliens admissible under the Guam-CNMI Visa Waiver Program and 8 CFR 212.1(q).* (1) *Eligibility for Program.* As provided in 8 CFR 212.1(1), in accordance with Public Law 110–229, beginning November 28, 2009, the Secretary of Homeland Security, in consultation with the Secretaries of the Departments of Interior and State, may waive the visa requirement in the case of a nonimmigrant alien who seeks admission to Guam or to the Commonwealth of the Northern Mariana Islands (CNMI) under the Guam-CNMI

Visa Waiver Program. To be admissible under the Guam-CNMI Visa Waiver Program, prior to embarking on a carrier for travel to Guam or the CNMI, each nonimmigrant alien must:

(i) Be a national of a country or geographic area listed in 8 CFR 212.1(q)(2);

(ii) Be classifiable as a visitor for business or pleasure;

(iii) Be solely entering and staying on Guam or the CNMI for a period not to exceed forty-five days;

(iv) Be in possession of a round trip ticket that is nonrefundable and nontransferable and bears a confirmed departure date not exceeding forty-five days from the date of admission to Guam or the CNMI. ''Round trip ticket'' includes any return trip transportation ticket issued by a participating carrier, electronic ticket record, airline employee passes indicating return passage, individual vouchers for return passage, group vouchers for return passage for charter flights, or military travel orders which include military dependents for return to duty stations outside the United States on U.S. military flights;

(v) Be in possession of a completed and signed Guam-CNMI Visa Waiver Information Form (CBP Form I–736);

(vi) Be in possession of a completed and signed I–94, Arrival-Departure Record (CBP Form I–94);

(vii) Be in possession of a valid unexpired ICAO compliant, machine readable passport issued by a country that meets the eligibility requirements of paragraph (q)(2) of this section;

(viii) Have not previously violated the terms of any prior admissions. Prior admissions include those under the Guam-CNMI Visa Waiver Program, the prior Guam Visa Waiver Program, the Visa Waiver Program as described in section 217(a) of the Act and admissions pursuant to any immigrant or nonimmigrant visa;

(ix) Waive any right to review or appeal an immigration officer's determination of admissibility at the port of entry into Guam or the CNMI;

(x) Waive any right to contest any action for deportation or removal, other than on the basis of: an application for withholding of removal under section 241(b)(3) of the INA; withholding of removal under the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; or, an application for asylum if permitted under section 208 of the Act; and

(xi) If a resident of Taiwan, possess a Taiwan National Identity Card and a valid Taiwan passport with a valid re-entry permit issued by the Taiwan Ministry of Foreign Affairs.

(2) *Implementing regulations.* The DHS regulations for waiver of the visa requirement for aliens seeking admission to Guam or to the CNMI under the Guam-CNMI Visa Waiver Program are set forth at 8 CFR 212.1(q).

(3) [Reserved]

(4) *Admission under 8 CFR 212.1(q).* Admission under 8 CFR 212.1(q) renders an alien ineligible for:

(i) Adjustment of status to that of a temporary resident or, except as provided by section 245(i) of the Act, other than as an immediate relative as defined in section 201(b) of the Act, to that of a lawful permanent resident;

(ii) Change of nonimmigrant status; or

(iii) Extension of stay.

(5)–(7) [Reserved]

(8) *Inadmissibility and Deportability.* (i) *Determinations of inadmissibility.* (A) An alien who applies for admission under the provisions of the Guam-CNMI Visa Waiver Program, who is determined by an immigration officer to be inadmissible to Guam or the CNMI under one or more of the grounds of inadmissibility listed in section 212 of the Act (other than for lack of a visa), or who is in possession of and presents fraudulent or counterfeit travel documents, will be refused admission into Guam or the CNMI and removed. Such refusal and removal shall be effected without referral of the alien to an immigration judge for further inquiry, examination, or hearing, except that an alien who presents himself or herself as an applicant for admission to Guam under the Guam-CNMI Visa Waiver Program, who applies for asylum, withholding of removal under section 241(b)(3) of the INA or withholding of removal under the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment must be issued a Form I–863, Notice of Referral to Immigration Judge, for a proceeding in accordance with 8 CFR 208.2(c)(1) and (2) and 1208.2(c)(1) and (2). The provisions of 8 CFR part 1208 subpart A shall not apply to an alien present or arriving in the CNMI seeking to apply for asylum prior to January 1, 2015. No application for asylum may be filed pursuant to section 208 of the Act by an alien present or arriving in the CNMI prior to January 1, 2015; however, aliens physically present in the CNMI during the transition period who express a fear of persecution or torture only may establish eligibility for withholding or deferral of removal pursuant to INA 241(b)(3) or pursuant to the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(B) [Reserved]

(C) Refusal of admission under this paragraph or 8 CFR 212.1(q)(8)(i) shall not constitute removal for purposes of the Act.

(ii) *Determination of deportability.* (A) An alien who has been admitted to either Guam or the CNMI under the provisions of this section who is determined by an immigration officer to be deportable from either Guam or the CNMI under one or more of the grounds of deportability listed in section 237 of the Act, shall be removed from either Guam or the CNMI to his or her country of nationality or last residence. Such removal will be determined by DHS authority that has jurisdiction over the place where the alien is found, and will be effected without referral of the alien to an immigration judge for a determination of deportability, except that an alien admitted to Guam under the Guam-CNMI Visa Waiver Program who applies for asylum or other form of protection from persecution or torture must be issued a Form I–863 for a proceeding in accordance with 8 CFR 208.2(c)(1) and (2) and 1208.2(c)(1) and (2). The provisions of 8 CFR part 1208 subpart A shall not apply to an alien present or arriving in the CNMI seeking to apply for asylum prior to January 1, 2015. No application for asylum may be filed pursuant to section 208 of the INA by an alien present or arriving in the CNMI prior to January 1, 2015; however, aliens physically present or arriving in the CNMI prior to January 1, 2015, may apply for withholding of removal under section 241(b)(3) of the Act and withholding of removal under the regulations implementing Article 3 of the United Nations Convention Against Torture, Inhuman or Degrading Treatment or Punishment.

(B) Removal by DHS under paragraph (b)(1) of this section or 8 CFR 212.1(q)(8)(ii) is equivalent in all respects and has the same consequences as removal after proceedings conducted under section 240 of the Act.

(iii) [Reserved]

PART 1235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 45. The authority citation for part 1235 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2003 Comp., p. 278), 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, 1731–32; Title VII of Public Law 110–229; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458).

■ 46. Section 1235.5(a) is revised to read as follows:

§ 1235.5 Preinspection.

(a) *In United States territories and possessions.* For provisions of the DHS regulations with respect to examinations of passengers and crew in the case of any aircraft proceeding from Guam, the Commonwealth of the Northern Mariana Islands (beginning November 28, 2009), Puerto Rico, or the United States Virgin Islands destined directly and without touching at a foreign port or place, to any other of such places, or to one of the States of the United States or the District of Columbia, *see* 8 CFR 235.5.

* * * * *

■ 47. Section 1235.6 is amended by revising paragraphs (a)(1)(ii) and (iii) to read as follows:

§ 1235.6 Referral to immigration judge.

(a) * * *

(1) * * *

(ii) If an asylum officer determines that an alien in expedited removal proceedings has a credible fear of persecution or torture and refers the case to the immigration judge for consideration of the application for asylum, except that, prior to January 1, 2015, an alien present in or arriving in the Commonwealth of the Northern Mariana Islands is not eligible to apply for asylum but the immigration judge may consider eligibility for withholding of removal pursuant to section 241(b)(3) of the Act or withholding or deferral of removal under the Convention Against Torture.

(iii) If the immigration judge determines that an alien in expedited removal proceedings has a credible fear of persecution or torture and vacates the expedited removal order issued by the asylum officer, except that, prior to January 1, 2015, an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands is not eligible to apply for asylum but an immigration judge may consider eligibility for withholding of removal pursuant to section 241(b)(3) of the Act or withholding or deferral of removal under the Convention Against Torture.

* * * * *

PART 1245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

■ 48. The authority citation for part 1245 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; section 202, Public Law 105–100, 111 Stat. 2160, 2193; section 902, Public Law 105–277, 112 Stat. 2681; Title VII of Public Law 110–229.

■ 49. Section 1245.1(b)(7) is revised to read as follows:

§ 1245.1 Eligibility.

* * * * *

(b) * * *

(7) Any alien admitted as a visitor under the visa waiver provisions of 8 CFR 212.1(e) or (q), other than an immediate relative as defined in section 201(b) of the Act;

* * * * *

Janet Napolitano,

Secretary of Homeland Security.

Eric H. Holder, Jr.

Attorney General.

[FR Doc. E9–26094 Filed 10–27–09; 8:45 am]

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